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ANDREW FERGUSON

the weekly

Standard

JULY 18, 2011 • \$4.95

A detailed oil painting of Samuel Alito, a man with glasses, wearing a dark suit, light blue shirt, and blue tie. He is resting his chin on his hand in a thoughtful pose. The background is dark with some warm, abstract brushstrokes on the left.

Samuel Alito, the Burkean Justice

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Poster art: "We must have more men," by Collette

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COVER BY ROBERTO PARADA

Reading, Writing, and RuPaul

The headline in the *Christian Science Monitor* pretty much says it all: “Could California lead nation in teaching of gay history in schools?” On July 5, the state’s Democratic-controlled assembly passed the FAIR Education Act by a 49-25 vote. The bill would “require California public schools to acknowledge the accomplishments of gays, lesbians and transgender Americans to be included in its teaching materials,” according to *Time*.

Color us old-fashioned, but transgender Americans? THE SCRAPBOOK eagerly awaits the shrieks branding parents that object to this as demonic bigots, but far from intolerance, there are other good reasons to be skeptical. While California implements its new reading, writing, and RuPaul curriculum, perhaps the state’s Democratic legislators should consider that it’s not exactly coincidental that California does not lead the nation when it comes to the first two subjects. According to the latest statistics, California schools have a 32 percent dropout rate—35 percent for African Americans

and 39 percent for Latinos.

Frankly, students in California are lucky to learn anything, let alone gay history. The Los Angeles Unified School District (LAUSD) is the second largest school district in the nation employing 33,000 teachers—and an *L.A. Weekly* investigation last year concluded that LAUSD fired only 7 teachers for poor performance in the last decade. Thanks to the state’s powerful teachers’ union, the legal bill for trying to fire these 7 teachers amounted to \$3.5 million. (Note that the absurd job protections California teachers enjoy were engineered in 2000 by ambitious state assemblyman Antonio Villaraigosa, now L.A.’s mayor.)

Politics are clearly responsible for the poor quality of education in the state. But California’s regrettable politics may, in fact, lead the nation here—whether the rest of America likes it or not. The state is such a large textbook market that the new law may force textbook publishers to change the standard texts that are used elsewhere in the country.

And California’s not alone in its

chronic desire to lard the curriculum with politicized nonsense. Maryland just became the first state in the nation to add an environmental literacy requirement that must be completed to graduate from high school. Democratic governor Martin O’Malley also said the requirement will lay a “foundation for green jobs.”

There’s nothing wrong with teaching kids to be respectful of the natural world. But the moment Democratic leaders start throwing around loaded phrases such as “green jobs” in this context, you just know it’s going to be an opportunity for political indoctrination.

The truth is, the essential foundation for jobs is basic literacy—not environmental or gay rights literacy. And you can’t have the latter without the former. How about public schools focus for a change on teaching kids the basic skills and doing it well? Once they can read, write, and do enough math to figure out how much their state government is taking out of their paycheck, then they can decide what they think about politics. ♦

The Achievements of Otto

A touch of the Old World intruded on the everyday last week when it was reported that Otto von Habsburg, son of the last emperor of Austria-Hungary, died at his home in Germany on the Fourth of July. He was 98 years old.

As THE SCRAPBOOK has suggested more than once, the death of anyone who has lived for nearly a century—especially in relative comfort and prominence, as in this case—can hardly be described as tragic. Yet THE SCRAPBOOK was slightly startled by the tone-deaf headline in the *New York Times*: “Otto von Habsburg, a

Would-Be Monarch, Is Dead at 98.”

This is a little like describing Abraham Lincoln as a “failed Senate candidate” or Ronald Reagan as the “ex-



Otto von Habsburg

husband of Jane Wyman”—especially in a publication which is governed by a family dynasty.

It is true that von Habsburg, as son of the last emperor, Karl I, was pretender to the long-dormant Austro-Hungarian crown, and as such, great-nephew of the Archduke Franz Ferdinand of Sarajevo

fame. But he was also the last person to have expected (or aspired) to reclaim the throne his family lost in 1918, or to rebuild an empire that included present-day Austria, Hungary, the Czech Republic, Slovakia, Bosnia and Herzegovina, Croatia, Slovenia, and parts of Italy, Poland, Romania, Ukraine, Serbia, and Montenegro.

Since Otto von Habsburg was a little less than six years old when the Habsburg dynasty fell, his life was spent almost entirely in exile (including the United States during World War II), and he was not permitted to set foot in Austria until 1966. But rather than leading an aimless existence in luxury, or holding forth in a make-believe court,

the Habsburg heir devoted his life to the cause of freedom and democracy in Europe. Armed with a doctorate in political science from the University of Louvain, he was a tireless agitator in the 1930s against the Nazis—who derided him as “Otto the Last,” and very nearly succeeded in murdering him for his vigorous opposition to the Anschluss.

After World War II he settled in Bavaria, overlooking his ancient homeland, where as a staunch democrat, free-marketer, and anti-Communist he was a leader of the movement for European unity and elected member of the European Parliament. In 1989, three months before the fall of the Berlin Wall, his Pan-European League sponsored a symbolic protest—a “Pan-European Picnic”—against the Communist regimes of Central and Eastern Europe which attracted hundreds of participants from East Germany and Hungary who had escaped across their borders.

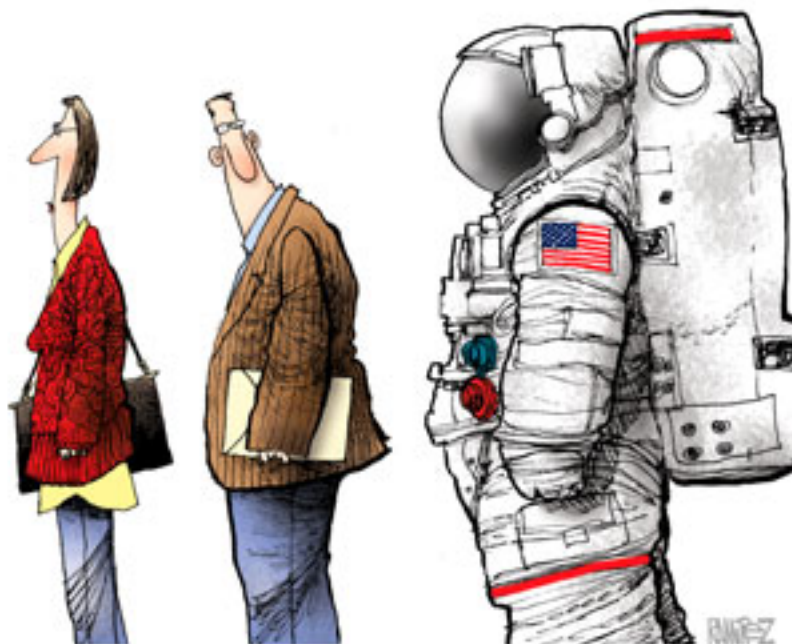
For a lifelong public advocate of human rights and prolific author such as Otto von Habsburg, it might well be said that the fall of Soviet communism and the unification of Cold War Europe was the culmination of his life’s work—by any measure, no small achievement for a “would-be monarch.” ♦

Catch ‘The Wave’

Congratulations and a tip of THE SCRAPBOOK to Reuel Marc Gerecht, a WEEKLY STANDARD contributing editor, whose latest book has just been published by the Hoover Institution. *The Wave: Man, God, and the Ballot Box in the Middle East* is part of a Hoover working-group series co-chaired by Fouad Ajami, who writes in the book’s foreword:

A former case officer in the Central Intelligence Agency’s Clandestine Service, Gerecht belongs to a long trail of illustrious intelligence officers, “spies,” drawn to duty in distant lands. A line runs from T.E. Lawrence to Reuel Gerecht, Westerners

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who venture into Arab and Islamic lands and never really quit them. This kind of sensibility is special, and gives rise to works of intense engagement. We are richer for these works, because there runs in that genre of writing an eye for the intimacies, and twists and turns, of these societies.

Coming from one of America’s foremost observers of the lands of Islam, and among the most distinguished of our prose stylists, this is high praise indeed—and hardly news to fans of Reuel’s writing in these pages. As his article on Syria elsewhere in this issue reminds us, we’ve all come to understand developments in the region in the context of his panoramic perspective—encompassing not only the politics, history, and religion of the Middle East but also the sweep of U.S. policymaking there.

The Wave, published in April but

completed more than a year ago, essentially predicted the Arab Spring. Reuel recognized that the regional status quo was shot through with stasis and decay and was bound to change. Accordingly, over these last six months—starting with the ouster of Tunisian president-for-life Zine el-Abidine Ben Ali, and continuing up to the present with protesters filling the streets of Syrian cities to demonstrate against Bashar al-Assad—his work has been more indispensable than ever. With dictators toppling and the region twisting toward democracy, even as it seems to tend to chaos, *The Wave* takes up the major and most timely concerns—the chances for democracy in the Middle East, the agents of change, and what the United States should do to encourage a sane transition.

Buy a copy and take it to the beach—there's no better place to read about the Middle East than while lying in the sand! ♦

More Must Reading

The summer issues of two of our favorite quarterlies have arrived in THE SCRAPBOOK's overflowing mailbox—and unlike the bulk of our mail, periodical and otherwise, we snatched these out, took them home, and have been reading both with great enjoyment and appreciation.

National Affairs, edited by our friend Yuval Levin, goes from strength to strength. THE SCRAPBOOK of course has to note two excellent contributions from fellow denizens of the masthead here at THE WEEKLY STANDARD: Fred Barnes on "Lessons from Canada"—yes, there really are some, and yes, they're really quite

interesting—and Jay Cost on "The Party of the Full Dinner Pail." That would be the GOP, if they had a better understanding of their history and the present moment. We've also very much enjoyed "The New Commanding Heights" by Arnold Kling and Nick Schulz, and are looking forward to moving on this weekend to interesting articles by Seth Lipsky on the dollar, Avik Roy on Medicare, and more.

Jewish Review of Books is also a feast—even for non-Jews like THE SCRAPBOOK! There are fascinating essays on Jewish greats like Hank Greenberg (by Eitan Kensky) and Irving Kristol (by Meir Soloveichik). Jerome Copulsky considers the thought of Moses Mendelssohn, Robert Alter the poetry of Yehuda Amichai—and, again, there's much more, all of it high quality, lively, and thought-provoking.

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Exotic Climbs

With the afternoon off from a conference near Lisbon, I hired a guide to take me to Sintra—stronghold of the Moorish invader 1,200 years ago, center of monastic learning in the Middle Ages, pleasure garden of Portugal's monarchy in the 19th century, and all of it spread across an upland pine forest knit together with hiking trails. It takes a guide to make sense of it all.

Just not the guide I got. Vasco (let us call him) was an affable man with a newish Mercedes and a confidence that his grand car would make up for any shortcomings in historical knowledge, English proficiency, or exertion.

"What are we going to see?" I asked, as we drove into the park.

"Is palace. His name is Pena Palace."

"Who lives there?"

"Who *was* lives there," Vasco corrected me. "Was kinks. Was kinks and quince."

It was at this point that something amazing came into view. Looming over the forest, at the top of a stovepipe of granite, were a series of crenellated battlements and towers, with pennants fluttering. This was the fortress built by the occupying Arabs in the 9th century as a base for watching the coast and terrorizing the countryside.

"Can we get there?" I asked Vasco.

"You can get there," Vasco replied. He dropped me off at a trailhead half a kilometer from the fortress. Ten minutes later I was standing beneath the mossy archway of the castle. It is impressive what one can accomplish with nothing more than religious zeal, sophisticated military architects, and an indifference to the comfort and safety of slaves. The castle was beautiful. It was impregnable. It was also, I noted with alarm, exceedingly easy to

fall off of. Its highest point was several hundred yards ahead, up a steep staircase of wobbly looking boulders that ran along the edge of a cliff.

I was in third grade when I discovered that I was scared of heights. We had season tickets to the Boston Patriots. Then one of the joke franchises of professional sports, the Pats played in a succession of borrowed stadiums. That particular year, they were playing at Harvard. My father had a system for avoiding the Boston traffic. For a couple of bucks, the owner



of Buzzie's Roast Beef, in the shadow of Charles Street station, would let us park the car for the afternoon, and we would take the Red Line the three stops into Cambridge.

There was a hitch, though. Buzzie's was separated from the station by a rotary, with cars squealing through at 70 miles an hour. A pedestrian overpass was the only way to reach the train, and what a pedestrian overpass it was. It was low-tech, rusty, ill-maintained, and probably named after some Hibernian political hack, like everything else the city government built in Boston. Its walkway was made of an iron mesh that you could see straight through to the street below. I took one step onto the grating and

dropped to my hands and knees. Until then I had thought of myself as a tough, independent eight-year-old, and I think my father thought of me that way, too. But that day, he carried me across the bridge. And although I managed to walk across under my own steam to get to our subsequent games, week after week, it took a supreme effort of self-control not to whimper.

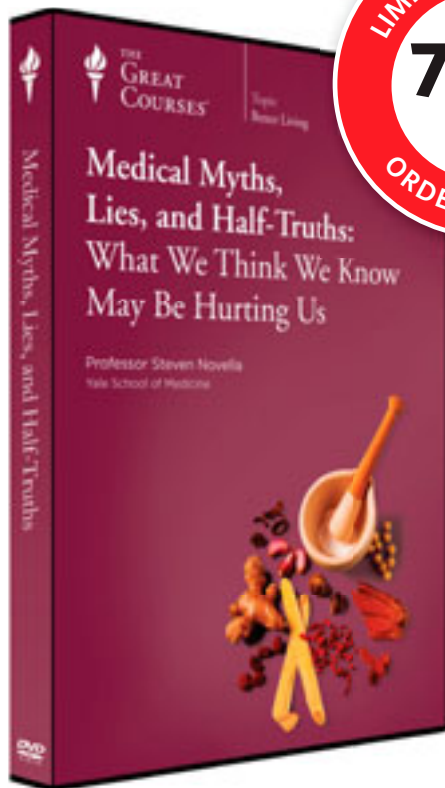
That fear has never totally gone away. I have always been mystified by those photos you see on the covers of hiking pamphlets and trail maps, with people yukking it up as they dangle their toes off of cliff-top promontories. Driving across bridges means chanting to myself and hyperventilating. I have walked the rim of the Grand Canyon leaning like a lambda into the canyon walls. After having looked forward for months to walking the storied fortifications of Diyarbakir in eastern Turkey, I discovered that they were accessible only via a two-foot-wide, railingless staircase that ran up the side of the wall for three stories. I skipped them. I just stood on a street corner in that crime-plagued city and waited for my friends to come back.

At the Moorish castle I resolved I would not go back to Vasco and tell him I had been too chicken to climb it. I was going to make it to the castle summit even if it meant looking ridiculous. There was no rush. There were rock posts every two or three feet, and they had been standing for about 1,200 years. All I had to do was grab one in a bear hug, then lurch and grab the next one. This worked great. Slow but steady. Don't look down. I was about halfway to the summit when I noticed a woman descending the cliffside towards me, using the same method. When we got about five feet apart we gave each other a smile of recognition—and, I have to say, mutual encouragement. I sat down on the steps just as I had knelt above the Boston rotary of 1970, and let her slide past. Then I stood up, grabbed the wall, and kept climbing.

CHRISTOPHER CALDWELL



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Grand Old Doves?

Opinion polls consistently show that the U.S. military is the most trusted institution in America. Republicans have benefited indirectly from that hard-won reputation because since the 1970s they have been seen as the strong, hawkish party, while Democrats have had to fight the stigma that they are weak and dovish. Republicans wouldn't throw away that aura—one of their strongest electoral assets—just to reach a budget deal with President Obama. Or would they?

There are persistent and worrisome reports that they might. The *Hill* newspaper, for instance, claims that Republican budget negotiators have been discussing cutting defense by \$600 billion to \$700 billion—considerably more than the already indefensible \$400 billion in cuts that Obama has said he would like to see over the next decade.

Obama's proposed cuts are bad enough; as former Defense Secretary Robert Gates implicitly warned before leaving office, such deep reductions would seriously impair the military's ability to meet its global commitments. Going beyond what Obama has proposed is simply suicidal—on both substantive and political grounds.

Start with substance: The defense budget did experience a rapid increase during the past decade because of the post-9/11 wars. But the budget is already shrinking—down from \$708 billion this fiscal year to \$670 billion in the next fiscal year. That's a \$38 billion cut, and the budget will decline even more as troops leave Iraq and Afghanistan.

Already the military is feeling the strain of maintaining all of its commitments, including a new war in Libya. Those who suggest, with a straight face, paring back a whopping \$700 billion more—even over the course of a number of years—should be forced to explain which missions currently performed by the U.S. armed forces they are willing to sacrifice.

Should we completely pull out of Afghanistan? Even with the overly hasty withdrawal of surge forces ordered by Obama, we still will have 70,000 troops there at the end of next year, costing at least \$70 billion. Pulling out troops even faster risks giving jihadists their biggest victory since 9/11.

Perhaps we should stop fighting pirates off the coast of Africa? Stop fighting in Libya so that arch-terrorist Muammar Qaddafi can claim a victory over the West? Stop targeting al Qaeda in Pakistan and Yemen and elsewhere? Stop deterring China, North Korea, or Iran? Stop patrolling the Persian Gulf through which much of the world's oil flows? Stop fighting cyberattacks emanating from China and Russia? Stop developing missile defenses to protect the American

homeland? Stop supporting Mexico and Colombia in their fights against narcotraffickers? Stop holding military exercises with friendly armed forces from Egypt to the Philippines—exercises that allow us to exert soft power at low cost?

Maybe advocates of budget cuts think we should continue performing all, or most, of those missions with less



Clockwise from left: Afghanistan, Somalia, Libya, North Korea

resources. But that's a cop-out. It's a recipe for stinting on training and personnel, thus creating a "hollow force" of the kind that we last saw in the late 1970s.

The reality is that there is no way the armed forces can perform all, or even most, of their current missions with less money. In fact, despite the growing spending of the past decade for contingency operations, the military has already cancelled a number of important procurement programs. These include the Army's Future Combat System and the Air Force's F-22, the best-in-the-world stealth fighter that was canceled just before China unveiled its own stealth fighter.

For the most part, the armed forces remain reliant on weapons systems designed in the 1960s and 1970s and procured in the 1980s: aircraft such as the A-10, F-15, and F-16, helicopters such as the Apache and Black Hawk, warships such as Los Angeles-class submarines and Ticonderoga-class cruisers, and armored vehicles such as Abrams tanks and Bradley Fighting Vehicles. These are all superb weapons, but they are rapidly aging—and are either being overtaken, or soon will be, by competing models produced abroad that are certain to fall into the hands of our enemies.

Moreover, competing powers such as China and Russia are designing weapons such as computer bugs and antisatellite missiles that could render much of our current equipment useless. We will have to develop defenses. And that won't be cheap.

At the same time, the Department of Defense must take care of its people—our most precious asset. There are 1.5 million active-duty military personnel, 750,000 civilian Defense Department employees, and 1.5 million personnel in the Reserves and National Guard. We already spend more on personnel costs (\$157 billion this year) than on weapons procurement (\$151 billion) and the imbalance is likely to grow in future years, thereby making it even harder to increase our power-projection capabilities. Yet Congress rebuffed Gates's attempts to institute modest co-payments for the fiscally unsustainable Tricare medical system. That was deemed too politically sensitive.

This is part of a pattern: Congress finds it difficult or impossible to cut specific defense programs because they all have powerful constituencies. But mandating "top-line" cuts may be politically palatable as part of a budget deal because lawmakers won't have to make tough choices about which programs to eliminate and which areas of the world to leave undefended.

Cutting defense won't solve our budget woes. The "core" defense budget, \$553 billion, is small as a percentage of GDP (3.7 percent) and of the federal budget (15 percent). Nor is it the reason why we are piling up so much debt. To reduce the deficit, lawmakers will have to do something about out-of-control entitlement programs.

If Republicans acquiesce in ruinous cuts to the defense

budget, they will cease to be known as Ronald Reagan's heirs. Instead they will be remembered as the party of William E. Borah, Hamilton Fish III, and Gerald Nye. Remember those GOP giants of the 1930s? They thought a strong defense was unaffordable and unnecessary. But their reputations collapsed on December 7, 1941, when we learned (not for the last time) the price of unreadiness. That is a lesson today's Republicans should remember as they negotiate over the budget.

—Max Boot

Liberty Is at Stake

Last month, a unanimous Supreme Court held that a Pennsylvania woman named Carol Bond may challenge a federal law under which she was prosecuted, on grounds that Congress had exceeded its powers and intruded upon the sovereignty and authority of the states. Until *Bond v. United States*, it was widely agreed that only states could advance such a claim. In fact, the federal government had taken that position in the courts below in *Bond*, changing course when the case reached the Supreme Court, where it agreed that Carol Bond indeed has "standing" to sue.

Now, a case about standing may seem like small beer. Yet *Bond* is important for what it says about federalism as we await the Supreme Court's encounter, as early as next year, with the health care overhaul's individual mandate.

Carol Bond, finding that a close friend had become pregnant by Bond's husband, opened a revenge campaign against the woman that involved putting caustic substances on places she would be likely to touch—such as her mailbox and car door handle. The woman suffered a minor burn on her hand. For this, Bond could have been held liable under ordinary criminal laws. Instead she was prosecuted under a law passed to implement a 1997 treaty designed to prevent the spread of chemical weapons.

Bond claimed that the law went beyond what the enumerated powers vested in Congress by the Constitution allow. Necessarily, her position rested on the Tenth Amendment, which provides that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the states respectively, or to the people."

In rejecting the view that only states may sue to enforce federalism, the Court, with Justice Kennedy

writing, said that individuals have their “own constitutional interests” in avoiding injuries from laws exceeding congressional authority. “Unconstitutional action,” Kennedy wrote, “can cause concomitant injury to persons in individual cases”—just as Bond claims happened in her case. “Her rights in this regard do not belong to a State.”

Bond will now have her case heard. Meanwhile, it is possible that other federal laws will be challenged by individuals claiming injury from “unconstitutional action”—meaning action said to exceed the powers vested in Congress.

The Court’s position on Bond’s standing reflects its understanding of federalism. After explaining the structural character of federalism and how it “serves to grant and delimit the prerogatives and responsibilities of the States and the National Government vis-à-vis one another,” Kennedy emphasized that federalism protects individual rights, that these rights are “not simply derivative of the rights of the States,” and that “some of these liberties are of a political character.” For example, federalism preserves “the initiative of [individuals] who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power.”

It’s hard to read *Bond* without thinking about the lawsuits challenging Obamacare’s individual mandate.

Here, too, the claim is that Congress went beyond its proper authority. Notably, Kennedy’s opinion makes the point that “laws enacted in excess of delegated governmental power” are problematic if they “direct or control” the actions of individuals, for then their “liberty is at stake.” One can expect this and other portions of *Bond* will be quoted to the Court when it reviews Obamacare.

That Justice Kennedy wrote the Court’s opinion in *Bond* is also worth noting. Through the years Kennedy has joined majorities vindicating federalism claims. But while much of the attention in those cases has been focused upon preserving state sovereignty, Kennedy has taken care to stress federalism’s safeguard for individual liberty. And now, in *Bond*, his concern is the entire Court’s.

This is not to say that nine justices will vote against the individual mandate. Four obvious ones almost surely will vote for it. The question is where Kennedy will be, since he is more often than not the justice whose vote decides the big 5-to-4 cases. While predictions as to how he might vote must be ventured nervously, *Bond* provides reason to think that Kennedy will see the Obamacare mandate as a law too far—one that exceeds the enumerated powers of Congress, cuts into the authority of the states, and violates individual liberty.

—Terry Eastland

The Right Way to Reduce Health Care Costs

By Thomas J. Donohue

President and CEO
U.S. Chamber of Commerce

One of the bold—and broken—promises made by supporters of the health care law was that it would reduce health care costs and bring health spending under control. Though many provisions have yet to be implemented, health costs are actually rising, and they will continue to climb as other parts of the law, like the employer mandate, take effect.

The Congressional Budget Office estimates that the law will increase federal health care spending by nearly half a trillion dollars over the next decade, and the administration has acknowledged that the savings earmarked for Medicare will never materialize. Private employer health care costs are also on the rise due, in part, to mandates already in place.

On July 12, the U.S. Chamber of Commerce and the Coalition for Affordable Health Coverage (CAHC) will host a conference to discuss runaway health care

costs and market-based solutions. Two CAHC-sponsored reports will be unveiled, revealing that despite passage of major “reforms,” out-of-control medical spending is adversely impacting everything from national competitiveness and employment to living standards and wage growth.

If we don’t get health care costs under control, our economic recovery will be further stalled when we should be doing everything to kick-start it. Obviously, a dramatic way to bring down health care costs would be outright repeal of the law. The Chamber opposed the law and would support its repeal. But whether or not it’s repealed, we’ll still have a health cost crisis and must implement sensible solutions to control costs, improve quality, and increase coverage—not just claim to.

The Chamber has long advocated market-based solutions that we know will help accomplish this. We can drive down costs through private sector solutions and competition that enable consumers to choose the coverage they want and where providers are rewarded based on quality of care—not

merely the quantity of services rendered. The government should not dictate what the coverage must be and how costs are set. Instead, businesses must continue to freely negotiate with health insurers. Medical liability reform and efforts to stanch defensive medicine would also drive down costs. And widespread adoption of health information technology—including electronic prescriptions and medical records—could further improve quality, lower costs, and reduce medical errors.

All told, these and other reasonable reforms would strengthen consumer choice, increase competition, and make health care more affordable.

We’ve heard the promises. Now it’s time to turn to a proof-positive approach for reform—a thriving, competitive marketplace that can finally put some downward pressure on rising costs.



U.S. Chamber of Commerce
Comment at
www.chamberpost.com.

The Democrats' Fuzzy Math

Yes, Paul Ryan's Medicare plan would lower costs. BY JEFFREY H. ANDERSON



President Obama and the Democrats claim that the Medicare reforms proposed by Paul Ryan and the Republicans would shift the burden of health costs onto the backs of seniors. This has been the central—and essentially the only—argument the Democrats have made against the GOP plan. But the Democrats' claim is contradicted by four decades' worth of empirical evidence.

Under Ryan's proposal, the

government would provide premium support to future seniors (who are now under 55) to help them purchase a private health plan of their choice. Participating insurers would have to cover all comers and couldn't vary premiums based on health status. The poor would get additional help. The reforms are designed to facilitate competition and choice, without having government bureaucrats ration care.

The Congressional Budget Office (CBO), however, projects that increasing competition and choice would actually raise costs. While saying it

"is hard to predict," the CBO projects that spending under Ryan's plan "would grow faster than such spending for the same beneficiary in traditional Medicare." But experience suggests the opposite.

A Pacific Research Institute study I authored found that the costs of the two flagship federal health care programs—Medicare and Medicaid—have risen far more than the costs of all other health care in the United States. From 1970 through 2008, the costs of Medicare and Medicaid each rose one-third more, per patient, than the costs of all other health care in America—the vast majority of which is purchased privately. And that's without counting the Medicare prescription drug program.

In fact, if Medicare's costs had risen only at the rate of non-Medicare, non-Medicaid costs, the program would have spent \$7,197 per beneficiary in 2008 instead of \$9,634. That 34 percent difference adds over \$100 billion to Americans' annual tax burden.

Even more tellingly, as a percentage of the gross domestic product (GDP), Medicare's and Medicaid's costs have each risen more than twice as much as the costs of all other health care in America. Health costs apart from Medicare and Medicaid have grown 41 percent per patient, in relation to GDP, while Medicare's and Medicaid's costs have grown 89 percent and 91 percent—nearly doubling—as a share of GDP.

So why would the CBO claim that allowing seniors to choose among private plans would increase Medicare's costs? In recent congressional testimony, CBO director Douglas Elmendorf admitted that his agency doesn't have "the tools, the analysis we would need to do a quantitative evaluation of the importance" of injecting more competition and choice into the health care system.

Likewise, when assessing the dramatic reduction in payment rates to Medicare providers, which is slated to happen as a result of colossal sums of money being siphoned out of Medicare and spent on Obamacare, Elmendorf says the CBO doesn't attempt to "model

DAVE GLEGG

Jeffrey H. Anderson is a senior fellow at the Pacific Research Institute.

the access to care or quality of care” that would result. Instead, the CBO simply assumes that providers would continue to treat just as many Medicare patients, giving them exactly the same quality of care, despite being paid far less for their services—less even (eventually) than for treating Medicaid patients.

Elmendorf recognizes the problem, saying, “That is a gap in our tool kit and a gap we are trying to fill.” In the meantime, however, the CBO is clearly—and admittedly—scoring government-based proposals (cutting payment rates, imposing price controls) far too favorably while similarly understating the benefits of market-based solutions.

In addition to these admitted shortcomings in its analysis, the CBO is likely relying on frequently cited studies that look only at the rise of private insurance costs, while ignoring the profound shift in the private health care market away from out-of-pocket spending. According to figures from the Centers for Medicare and Medicaid Services (CMS), in 1970, private insurance expenditures accounted for just 38 percent of all private health costs. In 2007, they accounted for 74 percent. Correspondingly, out-of-pocket expenditures dropped from 62 percent to 26 percent. Imagine if Medicare used to cover only 38 percent of seniors’ care and now covered 74 percent, yet that change wasn’t taken into account in gauging its success in controlling costs.

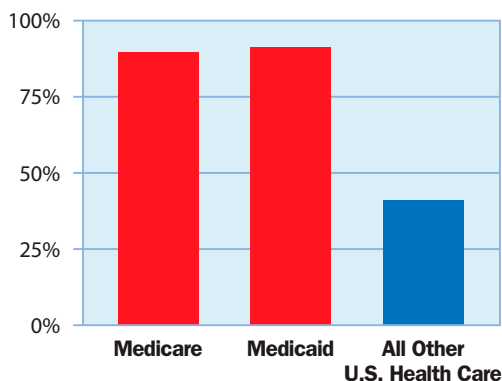
Under Ryan’s plan, it’s unlikely that private insurers would continue to absorb an increasing percentage of out-of-pocket costs. (If the CBO thinks otherwise, it should factor seniors’ out-of-pocket savings into its analysis.) The apt comparison, therefore, is total private costs versus total Medicare costs, and the latter have risen far more than the former.

Nor is this attributable to the fact that it costs more to cover seniors. My study measures the percentage growth in costs, not the absolute rise, and it cost more to cover seniors in 1970, too.

What’s more, the most recent CMS age-based figures (which cover ages from birth to 64) show that, from 1987 through 2004, the fastest-growing medical costs were for those 18 and under.

Why, then, do Medicare’s costs rise disproportionately? Because the program is as devoid of healthy competition as it is replete with wasteful inefficiency. In Medicare, if providers get it right the first time, they get paid once. If it takes four or five times—at seniors’ inconvenience and sometimes at their peril—they get paid four or five times as much.

Growth in Medical Costs Per Patient Beyond Growth in GDP, 1970-2008



SOURCE: U.S. Government figures. See also Pacific Research Institute Health Policy Prescriptions, Vol. 7 No. 7, July 2009.

In neglecting this historical evidence, the CBO is likely erring not only in its cost-growth estimates but also in its initial projections. While admitting it is “difficult to estimate,” the CBO says that, as of today, coverage under traditional Medicare would cost 11 percent less than coverage under Ryan’s proposal (which wouldn’t go into effect until 2022).

The CBO bases this estimate on private plans’ higher administrative costs and higher (per-procedure) payment rates to providers. But there are two problems with this: One, Medicare’s notoriously low payment rates don’t keep providers from making up the difference (and then some) by prescribing *more* care—which Medicare almost

always pays for, no questions asked. Two, most private administrative costs are money well spent—in establishing networks of accountable doctors, combating fraud, and so on.

The CBO cites Medicare’s administrative costs at 2 percent and private insurance’s at 11 percent (including taxes and profits). The *Washington Post* and *60 Minutes*, however, have reported that Medicare loses \$60 billion a year in fraud, and the Government Accounting Office cites a figure of \$48 billion, which it admits is incomplete. Just splitting the difference, that’s more than four times the combined profits of the nation’s 10 largest health insurers last year (according to the *Fortune* 500)—and it adds more than 10 percent to Medicare’s costs. That alone eliminates the gap in administrative costs—and then some.

Could the CBO really be overstating the initial cost of coverage under Ryan’s proposal by 11 percent (or more)? Well, the CBO was off by 35 percent—in the same direction—in its 10-year estimate for the Medicare prescription drug benefit, a program after which Ryan’s Medicare reforms are largely modeled.

In all likelihood, premium support under Ryan’s proposal would cover the entire cost of most seniors’ plans. Support would then rise with inflation (although this could easily be modified to, say, inflation plus 1, 2, or 3 percent—as necessary—while still generating massive savings). Most important, by facilitating competition and choice among private plans, Ryan’s reforms would dramatically reduce the growth of Medicare’s costs—thereby making it much easier to keep the program, and the country, solvent.

It boils down to this: Things don’t get cheaper or more efficient by being funneled through the massive bureaucratic apparatus of the federal government. The Democrats, and the CBO, would have us believe that they do. But empirical evidence and common sense say otherwise. ♦

The Syrian Challenge

This administration never misses an opportunity to miss an opportunity. **BY RUEL MARC GERECHT**

The administration's policy toward Syria is shaping up to be the greatest missed opportunity of Barack Obama's presidency. His failure of vision and nerve, paired with an acute Republican fatigue with the Middle East and foreign policy in general, has allowed Syria to drop off Washington's radar screen. But if Syria were to break the right way and the regime in Damascus were to fall, the most tenacious state-sponsor of terrorism in the Arab world—Tehran's strongest ally and the lifeline to the terrorism-loving Lebanese Hezbollah—would be taken out. Alas, an administration that came into office only a little less eager to engage Damascus than Tehran seems stuck in its stillborn Israeli-Palestinian peace process and the turmoil of the Great Arab Revolt.

There is some reason to believe that the White House now knows Bashar al-Assad's Syria is not essential for solving the Israeli-Palestinian imbroglio. And clearly, President Obama and Secretary of State Hillary Clinton want to help Syrian protesters; both give the impression, however, that they don't really think they can.

Further, the uncertainties of the Arab Spring and the North Atlantic Treaty Organization's air war in Libya have spooked the administration. Its "realist" tendencies are well known, and "realism" powerfully comes to the fore when a president

doesn't know what to do—or believes that the United States can do little. The safest and easiest bet then is to do nothing—the essence of most "realist" policy.

Such "prudence," "restraint," and "patience"—the administration is fond of these words—can be commendable



Protest poster, March 2011

when a situation is messy or murky. But neither applies in Syria. This is an easy call: We have a chance to eliminate one of America's worst enemies in the region—the linchpin of Iran's alliances and terrorist apparatus. We have a chance to traumatize Tehran: The world will look a lot more precarious to supreme leader Ali Khamenei and a lot more hopeful to the millions behind Iran's pro-democracy Green Movement if Bashar al-Assad goes down. The importance of Syria to Iranian foreign policy and internal politics cannot be overstated.

Through Syria, we have a chance to convulse the politics of Lebanon, where Hezbollah, revolutionary Iran's only Arab offspring, now reigns supreme. The organization does not own the majority Shia community of Lebanon; the potential political diversity of the Shia has been stymied by Hezbollah's military and economic power, which depend on its ties to Damascus and Tehran. The Sunnis of Syria, some 75 percent of the population, have long chafed under the harsh rule of the Alawites, who are nearer 15 percent. Empowered, the Sunnis are unlikely to be nice to Hezbollah, which has run roughshod over Lebanon's Sunnis, with their close, historic ties to Syria's Sunni community.

If Assad falls, Hezbollah will have no choice but to hunker down and avoid any conflict with Israel. If even the most rudimentary, morally repugnant, Islamist-felicitous, Israeli-cursing democracy arose in Damascus, we still might see the Arab world realign decisively toward representative government. Egypt, Iraq, and Syria have been the engines of modern Arab thought; if they all embrace popularly elected governments, Middle Eastern Muslims may evolve in a direction that will make both state-sponsored terrorism and al Qaeda-type extremist movements unsustainable. The most modern Arab societies—Egypt, Tunisia, Syria, Iraq, Libya, and Algeria—have been brutalized so badly by secular Arab police states that this process will not be quick or easy.

Yet it has been perverse to watch American liberals and conservatives fret about unleashing Islamists through the downfall of dictatorships when it was those very dictatorships that largely created the zealots. The administration certainly suffers from this Islamist-run-amok anxiety, which dovetails nicely with the State Department's infatuation with enticing an Alawite-dominated Syria into the peace process. But this anxiety is a strategic cul-de-sac.

Arab police states ethically upended their societies as they

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sought to “modernize” them. Representative government offers a way for these societies to regain their moral balance—to have the great debates about the role of religion in society that were simply shut down by the lawless Westernizing dictators who have done so much to give secularism a bad name in the region. The West is stable because it enjoys (after much blood, sweat, and tears) an organic, responsive, and law-abiding relationship between the citizens and their elected leaders. The Middle East is unstable because its authoritarian regimes are essentially lawless (the kingdoms are in slightly better shape than the “republics” because royal structures retain social layering and conventions that buffer and restrict the ruler’s behavior).

The Middle East is also unstable because faithful Muslims feel injustice acutely. Although this is poorly appreciated in the West, Islam has been a religion of rebellion as much as it has been a faith of “oriental despots.” As modern Middle Eastern societies have become more religious, they have become more rebellious. This Islamic “protestantism” now coincides with the anomie and anger of the Facebook generation, who are intimately connected to the West.

In Syria, most protesters have probably come from the average Sunni faithful, the non-college-educated men and women of the smaller towns who have no commercial ties to the regime, as do the Sunni elite of Aleppo and Damascus. The protesters have proven astonishingly brave. And their calls for self-government have been crystal clear. They have—so far—been amazingly resistant to calls for attacks on the ruling Alawite community. It’s hard to believe that this moderation will last, however, if the regime’s savage reprisals against the Sunni demonstrators continue.

It is sad that the American ambassador in Syria, Robert Ford, has been trying to encourage the protesters to engage the regime. It beggars the imagination that Thomas E. Donilon, Obama’s *über*-realist national security adviser, thinks

Bashar has any intention of liberalizing, let alone democratizing, his rule. If Assad survives, he’ll most likely turn his draconian police state into an Orwellian one. And if Assad survives, Obama loses. Iran, Hezbollah, and all the bad actors in the Middle East (most of whom have offices in Damascus) are going to rejoice.

Although the administration realizes the importance of Turkey for Syria’s future, it has not tried arduously to encourage the Turks to counter and undermine Damascus. But if the Alawite regime cracks and some sort of democratic government follows, then the Turks, who so far have forcefully condemned Assad, can rightly claim to have advanced democracy in the region.

This ought to be viewed as a dream scenario for the United States: The most powerful Muslim state of the Middle East becomes the most influential advocate of democracy. This would be a revolutionary turn for the ruling Justice and Development party in Ankara. Prime Minister Recep Tayyip Erdogan and Foreign Minister Ahmet Davutoglu both had sought friendly relations with Assad. But the savagery of his crackdown turned opinion in Turkey, then in the midst of a parliamentary election.

Turkish public opinion became intensely hostile to Damascus. Turkish newspapers started talking about the “Alawite [read Shiite] dictatorship” in Damascus, enflaming Sunni Turkey’s distaste for things Shiite. Davutoglu’s nonsectarian, pro-Muslim, “neo-Ottoman” policy of good relations with all of Turkey’s Middle Eastern neighbors has been coming apart because a democratizing Turkey actually does care about self-government beyond its borders. It cares, too, about Sunnis getting killed and tortured by Shiite heretics.

There are many things that the Obama administration should be doing that it isn’t: using the presidential bully pulpit against the Assad regime, deploying the American

ambassador in Damascus as a shield and voice for the opposition (if Ford gets expelled, he gets expelled), organizing the Western diplomatic community in Damascus to do whatever it can to aid the opposition, offering substantial technical support to the Turks to extend a Wi-Fi-ed broadband as far over the Syrian border as possible, and working with Paris to implement energy sanctions that might severely impair the Assad regime. But the most important thing it could do now is encourage Turkey to stand firm against Syria.

Ideally, we should want to see the Turks establish a buffer zone or safe haven on the Syrian side of the border (Ankara sometimes did this in Iraq to counter nefarious Kurdish activity). Such a Turkish intervention, which would likely be backed by the French, would be convulsive inside Syria and would signal to the military that Ankara had irreversibly chosen sides. It would also signal to the Sunni elite of Aleppo, just 26 miles from the Turkish border, that their essential Turkish trading partner had drawn a line in the sand.

Neither Erdogan nor Davutoglu would want to do this; but Turkey might feel obliged to if the demonstrations continue, regime savagery and the number of refugees increase, and Sunni Syrian military units start to peel off (the regime so far has been able to maintain military discipline among Sunni soldiers while using predominately Alawite units and militias as shock troops against the protesters). Even though supporting Turkish military action is undoubtedly a bridge too far for President Obama, not to mention his “realist” national-security team, the administration should do itself a favor and sympathetically discuss this contingency with Ankara. One of Assad’s most critical objectives now is to turn the Turks back towards him. If he can take Ankara out of play—which, given the semiofficial nature of the Turkish press, would curb most of the Turkish media’s anti-Alawite coverage—then Assad could neutralize the Sunni elite. If Aleppo

stays loyal, then the protest movement may be killable.

As much—even more—than Egypt, Syria has incubated the ideas that have shaped the Middle East since the collapse of the Ottoman and European empires. In a critical way, modern Syria is the polar opposite of modern Egypt. A solid Egyptian identity launched the people of the Nile into modern Arab politics. Gamal Abdel Nasser's pan-Arabism was an easy extension of his profound patriotism, which depicted the fatherland as the cutting edge of "the Arab nation." A weak, almost nonexistent, Syrian national identity, when it collided with the supercharged "isms" of the twentieth century, hurled the heterodox people of Syria into an especially mean-spirited Arab nationalism, which ravaged the country. Like Egypt, Tunisia, and Libya, Syria is rebelling against all that went wrong since the country became conscious of itself. Rebellious Syrians, like so many other Arabs (and Iranians), are trying to reattach their patriotism, their faith, and their personal pride to ideals and politics that aren't so violent, fearful, and corrupt.

Like all Arabs outside of Israel, they have no real experience with democracy; like all the Arabs along the Mediterranean, they have been permeated with Western ideas. They are yearning for freedom and opportunity, which is just across the sea, tantalizingly accessible via television, the Internet, and family members in the West.

Syria is the most important state to be convulsed by the Great Arab Revolt. It offers the prospect of a devastating setback to America's worst enemies. And the Obama administration hasn't yet blown it. Time remains, thanks to the courage of ordinary Syrians. Yet the Turkish window—the most important operational opportunity—may be closing. American power cannot effectively be deployed unless Washington senses that a great victory can be won. Does President Obama have this strategic sense? Does he know how to marry power politics to idealism? ♦

The Permanent Obama Campaign

Now headquartered at the White House.

BY FRED BARNES



A whistle stop in the East Room of the White House

At Barack Obama's White House, the presidency and the president's reelection campaign have merged. Totally. In the past, presidents have exploited their office to boost their reelection prospects. But never like this.

The weekly radio address from the White House, the presidential policy address, and the opening statement at a presidential press conference have been transformed into campaign tools. Though there's nothing sacrosanct about these events, they've never before been used in such a blatantly partisan way.

President George W. Bush didn't do this while seeking reelection in 2004. Nor did other presidents, as best I can recall—with the possible

exception of Franklin Roosevelt in 1936 (before my time). But for Obama, his reelection themes—attacking "millionaires and billionaires" and criticizing Republicans as cruel and uncaring—have become presidential talking points.

Presidents wear two hats, one presidential, the other partisan. When Obama called congressional Republicans and Democrats to the White House last week to discuss the debt limit, it was a presidential event. Afterwards, though participants weren't supposed to reveal what had gone on, administration officials touted Obama's supposedly commanding role in the talks in leaks to the media.

That was pretty much business as usual. In background briefings following a major event, White House aides routinely give reporters details of how brilliantly the president

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performed. This practice has been going on for decades.

When a president seeking reelection appears at a party fundraiser or a campaign rally, he plays a partisan role, both as a candidate and as the leader of his party. Obama, already an announced candidate for reelection with a growing campaign operation, has spoken at numerous fundraisers in recent months.

But the distinction between the presidential and the partisan in the Obama White House has not simply become fuzzy. It has vanished altogether. Take his April 16 Saturday radio address to the nation—a practice begun by President Reagan—in which he lambasted the “vision” of the Republican budget:

It's a vision that says in order to reduce the deficit, we have to end Medicare as we know it, and make cuts to Medicaid that would leave millions of seniors, poor children, and Americans with disabilities without the care they need. But even as this plan proposes these drastic cuts, it would also give \$1 trillion in tax breaks to the wealthiest 2 percent of Americans—an extra \$200,000 for every millionaire and billionaire in the country.

Three days earlier, Obama had delivered a speech on debt reduction that, in effect, superseded the official 2012 budget he had sent to Congress in February. The address was a classic presidential event with an invited audience.

Yet with Republican congressional leaders sitting in front of him, Obama launched into a brutally partisan bashing of their agenda. He included his “millionaires and billionaires” mantra, plus the suggestion the Republican budget is un-American. It “would lead to a fundamentally different America than the one we’ve known, certainly in my lifetime,” he said.

With this speech, Obama crossed a line. A presidential address on a traditional subject, the annual budget, sounded like a stump speech in the heat of a campaign.

Then, at a White House press conference on June 29, Obama introduced a new issue, the tax break for corporate jet owners. This was the first Republicans had heard of it. Eliminating that

particular tax loophole hadn’t been mentioned in the debt limit negotiations headed by Vice President Biden.

Not to be too finicky, but Obama cited it at the beginning of the session, before he had taken any questions from reporters. A president can’t dictate what he’s asked, but his statement is the equivalent of a briefer-than-usual presidential speech. In this case, Obama used it as a partisan weapon. Here’s part of what he said:

It would be nice if we could keep every tax break there is, but . . . if we choose to keep those tax breaks for millionaires and billionaires, if we choose to keep a tax break for corporate jet owners, if we choose to keep tax breaks for oil and gas companies that are making hundreds of billions of dollars, then that means we’ve got to cut some kids from getting a college scholarship . . . to stop funding certain grants for medical research . . . [and] food safety may be compromised.

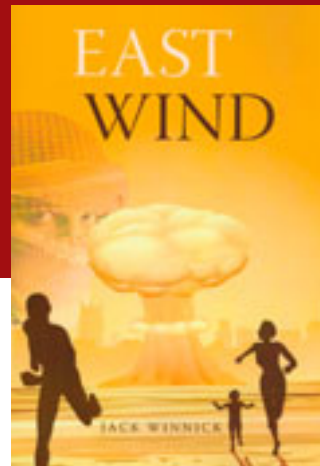
This is campaign palaver. Pigeonholing Republicans as defenders of the rich is Obama’s main reelection theme at the moment. And after raising it, he repeated it again and again in response to questions from the press.

There’s a downside for Obama in this all-consuming preoccupation with reelection. The distrust of him by Republicans could hardly become much deeper, but it has. They suspect his sudden intervention in the debt limit negotiations is designed more with his reelection in mind than with reaching an accord that Republicans in the House and Senate are likely to vote for.

And they were not assuaged to learn that one of the chief White House spinners these days is David Plouffe, Obama’s campaign manager in 2008 and now a senior presidential adviser. Plouffe spoke to a private media group the morning of last week’s summit.

But let’s not get carried away. That politics and reelection are obsessions of a president and his staff—that’s hardly unheard of. And the line between a president’s official and his partisan roles is not always bright. The roles sometimes come together. But never as they have with President Obama. ♦

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Not Taking Other People's Money

Isn't that the morally decent thing to do?

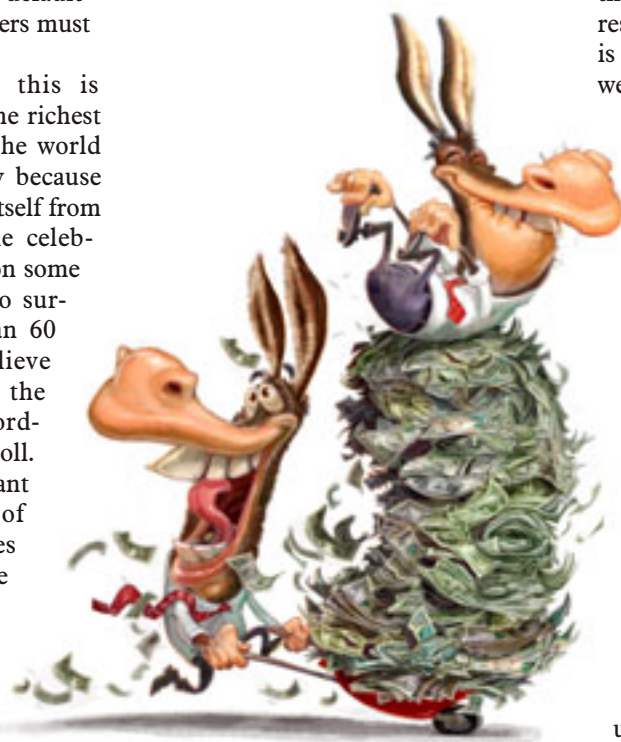
BY ARTHUR C. BROOKS

The problem with socialists, according to Margaret Thatcher, is that “they always run out of other people’s money.” We haven’t hit that point just yet, but we have hit our nation’s legal credit limit of \$14.3 trillion. To avoid defaulting on our loans, policymakers must raise that limit.

For many Americans, this is absurd and humiliating: The richest country in the history of the world is teetering on bankruptcy because our government can’t stop itself from spending, like a loathsome celebrity blaming bad behavior on some dubious new addiction. No surprise, then, that more than 60 percent of Americans believe Congress should not raise the federal debt ceiling, according to a recent CBS News poll. This does not mean they want to see America default, of course. Rather, it indicates a strong popular will to see our government stop its ruinous spending.

Many politicians agree with this sentiment, but understand that refusing to raise the limit would create more problems than it would solve. So they look for other solutions, such as the Republican idea to tie support for an increase in the debt ceiling to equal decreases in public spending. As fair and prudent as this might

sound, the president disagrees, insisting that we must raise taxes as well if he is to agree to any cuts. As he said in his remarks two weeks ago, “You can’t reduce the deficit . . . without having some revenue in the mix.”



Technically, of course, you *can* reduce the deficit without raising taxes; he simply doesn’t want to.

This has become a recurring theme in all recent budget fights. The government’s vast deficits stimulate calls to cut spending from the right, which are met by calls to raise taxes from the left. The left’s argument is almost always accompanied by the claim that cutting spending is anti-poor, and advocates for cuts are simply tools of

the selfish wealthy who resent having to pay their share. According to *New York Times* columnist Paul Krugman, the “angry rich,” as he calls them, are “wallowing in self-pity and self-righteousness.”

The president talks in moral terms about the need to raise taxes. It is, he claims, a matter of basic fairness. “There’s nothing serious about a plan that claims to reduce the deficit by spending a trillion dollars on tax cuts for millionaires and billionaires,” President Obama said of the House Republican budget on April 13. And in his town hall meeting a week later, he called for a tax code that is “fair and simple” and for spending cuts that are “fair” and require shared responsibility. The message, then, is clear: Americans who don’t think we should cut the deficit by increasing

taxes aren’t just guilty of bad math—their morals are shabby too.

For the most part, tax increase opponents have been dumbfounded by the charge. They believe they are right in opposing new taxes but have been unable to coherently counter the allegation that wanting citizens to be able to hold onto their hard-earned money makes them morally degenerate. Tax opponents, then, must arm themselves with both practical and moral arguments.

First, the practical argument. How have we gotten to this fiscal state in our nation? Most of us will say because of overspending by the federal government. This profligacy did not begin with the Obama administration, to be sure. Republicans and Democrats alike have been all too willing to spend vast amounts of other people’s money, often exhibiting their greatest bipartisanship on this point.

The practical answer to this problem involves common sense. What do most of America’s families do when they find they are overspending? They don’t send the kids out to get part-time jobs in order to

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GARY LOCKE

increase family revenues—they cut back on their spending. Why? Because that's what works to solve the problem.

The government can learn from families. In fact, the data show that when countries are trying to find their way out of a debt crisis, the more they rely on tax increases as opposed to spending cuts, the more likely they are to fail. My colleagues Kevin Hassett, Andrew Biggs, and Matt Jensen studied 21 developed countries that have attempted fiscal consolidation over the last 37 years. Some succeeded and returned to economic health; others failed.

On average, failed attempts to close budget gaps relied 53 percent on tax increases and 47 percent on spending cuts. Successful consolidations averaged 85 percent spending cuts and 15 percent tax increases. Some of the most successful financial comebacks—like Finland's in the late 1990s—involved more than 100 percent spending cuts, so that taxes could be lowered. The

spending cuts by the successful countries centered on entitlements and government personnel.

Now let's look at the moral argument against raising taxes. Why does the president want to increase America's tax burden? You may think it's just a way to increase revenues and reduce the deficit. But even the president knows he can't solve the fiscal crisis by helping himself to bigger and bigger chunks of the income of America's most successful people. Even if individuals earning more than \$200,000 were taxed at a 100 percent marginal rate—and we confiscated their passports so they could not flee—the take would come to \$1.27 trillion, or just 77 percent of this year's deficit.

For the administration, it's not about the money—as we have heard again and again, it's about “fairness.” The president believes that we will be a better nation if we redistribute more money from those who have more to those who have less. How much more

do we need to redistribute until our system is fair?

As you ponder this question, remember the facts: The wealthiest 5 percent of Americans already account for 59 percent of federal income taxes. Nearly half of our citizens pay no federal income taxes at all—yet two-thirds of us believe that everybody should at least pay something, even if just to remind ourselves that government isn't free. The Tax Foundation reports that the percentage of Americans who are net takers from the tax system is nearing 70 percent.

If our system is not yet “fair,” what will make it so? If the top 5 percent paid 75 percent of the total? Or 95 percent? If they could, would it be ideal for the top 1 percent to carry all the rest of us so we could finally have a tax code that is “fair and balanced”?

This is not the America that our Founders believed in—nor a debate they would have conducted. They did not struggle to make America the



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nation of claimants we are rapidly becoming. They would not have recognized our current leaders' definition of fairness in terms of forced redistribution. And they would most certainly not have agreed that the answer to rampant government overspending is to tax our citizens more.

To the Founders, fairness was a question of rewarding merit. Thomas Jefferson spoke of the need to guarantee to every citizen "a free exercise of his industry and the fruits acquired by it." He even wrote to John Adams about their shared belief in "a natural aristocracy among men." The basis of this hierarchy was not nobleness of birth but "virtue and talents." Alexander Hamilton praised a community in which "each individual can find his proper element and call into activity the whole vigour of his nature." And in the following century, Abraham Lincoln declared, "I don't believe in a law to prevent a man from getting rich" but rather a law that will "allow the humblest man an equal chance to get rich with everybody else."

Since the time of the Founders, America has not been a magnet for immigrants seeking a system that penalizes success to pay for largesse. Letters from my great-grandparents who came through Ellis Island suggest they were desperate to get to America to earn their success, not to get great government programs like "cash for clunkers."

In the coming weeks and months, as the debt ceiling debate rages and new budget battles arise, we will hear more and more class-warfare rhetoric about corporate jets, miserly rich people, and the need for higher taxes. Free-enterprise advocates must be ready to make a three-part case. First, it is bad economics to tax our way out of the hole our government has dug for us. Second and more important, it betrays a lack of national moral fiber to say, in effect, "We are too weak to control our spending." Third and most important of all, it is not "fair" in any traditional American understanding of the word to tax our way out of a spending problem. ♦

Let's Talk Education Reform

A GOP candidate's speech.

BY CHESTER E. FINN JR. & MICHAEL J. PETRILLI

The Republican presidential field is beginning to take shape, and candidates and maybe-candidates are figuring out where they stand and what to say. Sooner or later, they will need to say something about education. May we suggest a few talking points?

Folks, you know that our education system is tattered. Some of it is fine, but too much is mediocre or worse. Once the envy of the world, American schools are losing ground to those in Europe and Asia. Today, many countries are out-teaching, out-learning, and out-hustling our schools—and doing it for a fraction of the cost.

Meanwhile, failed education systems in our cities worsen the odds that the next generation will climb out of poverty into decent jobs and a shot at the American dream. And as much as many of us prefer not to notice, way too many of our suburban schools are just getting by. They may not be drop-out factories, but they're not preparing anywhere near enough of their pupils to revive our economy, strengthen our culture, and lead our future.

Turning this situation around has been the work of education reform for the past two decades. We've spent a lot of money on it. We've had any number of schemes and plans and laws and pilot programs. And we've seen some modest success. Graduation rates are starting to inch up again. The lowest-performing students have made gains.

Chester E. Finn Jr. and Michael J. Petrilli are president and executive vice president of the Thomas B. Fordham Institute.

Many more families are taking advantage of many more forms of school choice. And our best public charter schools are demonstrating that tremendous success is possible even in the most challenging of circumstances.

Leaders from both parties deserve credit for these gains, including President Bush and, yes, President Obama. We need to appreciate his support for quality charter schools, rigorous teacher evaluations, and merit pay.

But we've got a long way to go on this front, and the past couple of years have reminded us that breakthrough change won't come from Washington. It will come from our states, our communities, and our parents. We've also learned that, at the end of the day, Barack Obama, Nancy Pelosi, Harry Reid, and other Democrats will go only so far in crossing their pals and donors in the teachers' unions. While they may talk the talk, how they walk—and especially how they spend taxpayers' hard earned dollars—reveal far more about their priorities and their loyalties.

Consider this: The president's so-called stimulus bill included over \$100 billion to bail out our mediocre education system. About \$4 billion of this went to promote school reform. In other words, Obama spent 25 times as much to prop up the status quo as he did to push for meaningful change—\$96 billion just to keep our education bureaucracy immune from the painful effects of the recession that almost everyone else in America has had to cope with.

Is it any wonder we have a whopping deficit, while our schools haven't improved? Is it any surprise that the National Education

Association was so fast out of the gate with an endorsement for President Obama's reelection?

What did we get for all that money? Nothing. Nada. Zip. No improved student achievement. No breakthrough innovations. No new insights into how to close the achievement gap. No concessions from the unions on their gold-plated health care benefits or retirement pensions or lifetime job protections. We spent \$100 billion and, poof, almost all the money just evaporated.

Consider this: For \$100 billion, we could have sent ten million needy kids to private schools for two years. We could have created a thousand new charter schools. We could have given the best 25 percent of America's teachers a one-time bonus north of \$100,000—or \$10,000 a year for ten years. But what did we buy instead? Nothing. We just delayed the inevitable budget cuts for a year or two.

Not that this is unusual for an education system that has perfected the magic trick of making money disappear. We spend almost \$600 billion a year on our schools—more than we spend on Medicare and more than we've spent over a decade in Afghanistan. Yet we know practically nothing about where all this money goes or what it buys.

Can you tell me, for example, how much your local public school spends each year? Five thousand dollars per student? Ten thousand? Twenty thousand? I'll win this bet because nobody knows, not even the principal—that's how opaque our system is.

Now, I believe firmly that the federal government has been trying to do too much in education—trying to tell schools whom they should hire, to shape the curriculum, to tie teachers in knots. None of this has worked except in producing red tape and frustration. Under my administration, we will turn all of this back to the states, where authority for education resides and where it belongs. And where Republican governors like Chris Christie, Mitch Daniels, John Kasich, and Scott Walker are demonstrating real reform.

But surely our national government can ensure that we at least know what we're spending our money on and what we're getting for those dollars.

The cornerstone of my administration—in education as in other areas—will be transparency. We will say to states and communities: If you want education dollars from Uncle Sam, you need to open up your books so everybody can see where the money is going. Taxpayers deserve to know how much their kids' school spends per child and be able to compare that with the neighboring school or a school across the city, state, or nation. Making this information available, I believe, will have a catalytic effect, empowering school boards, taxpayer groups, and other activists to push for greater

Once good standards and decent tests are in place, states should release test scores and should rate schools on an easy to understand scale, ideally from A to F, as Florida started doing under Governor Jeb Bush.

productivity from our sheltered and bloated education bureaucracy.

But transparency about money is not enough. We also need to make student achievement more visible.

We all know that we're doing a ton of testing. Some of it is a necessary pain to gather vital information about how our children and their schools are performing. Teachers need that information about their pupils, principals about their teachers, superintendents about their schools. But considering all the testing our kids endure and all the data we collect, parents and citizens and taxpayers actually know astonishingly little about what's working and what's not.

Ten years ago, policymakers in Washington tried to address this issue through the No Child Left Behind Act. And it did some good things. But it made a mistake when it tried to force

a one-size-fits-all accountability system on every state in the land.

The proper federal role, instead, is to ask states to make their school results transparent. That starts with rigorous academic standards and tests you can trust—not watered down exams that almost everybody passes. And, to their credit, the states are working to meet this challenge with a set of rigorous standards for reading and math that were developed by governors and state superintendents, not by the federal government. I support those standards so long as they remain in the hands of the states and so long as they remain voluntary. What I cannot support—and what none of us will tolerate—is a top-down, federal effort to mandate particular standards or create a national curriculum.

Once good standards and decent tests are in place, states should release test scores (and other revealing information such as graduation rates) every which way, and they should rate their schools on an easy to understand scale, ideally from A to F, as Florida started doing under Governor Jeb Bush. The details of how to do this should be left to the states, however, not micromanaged from Washington.

Finally, one of the best ways to get more bang for the education buck is to strap it to the backs of individual kids and let parents decide which schools deliver the best value for money—and give them as wide a range of choice as possible. In my view, the available choices should include private, charter, and virtual schools, and just about anything else with the potential to deliver a quality education to kids. If a state will do the right thing and trust parents to decide what school should receive its money, the federal government should do the same with its (relatively small) part of the money. Add it to the backpack and let it travel with the kid.

Let me be clear: My plan won't fix all that ails America's schools. Because nobody can do that from Washington. What we *can* do is empower parents, states, and educators with better information and more choices. And that will be a huge step forward. ♦

The Burkean Justice

Samuel Alito's understanding of community and tradition distinguishes him from his Supreme Court colleagues

BY ADAM J. WHITE

In the Supreme Court's last decade, the most politically heated cases have reliably been the most closely decided. From the deadlocked Bush-Gore election, to partial-birth abortion, to Second Amendment rights, to corporate political expenditures, to Guantánamo, the Court fractured along familiar right-left lines. How strange, then, to see this year's most emotionally charged case ending not in acrimony but near-unanimity.

When the Supreme Court convened for oral argument in *Snyder v. Phelps*, judicial formalities only thinly veiled the intense bitterness smoldering among the parties and their supporters. At one table sat counsel for Albert Snyder, father of the late Marine Lance Corporal Matthew Snyder, who was killed in al Anbar Province, Iraq. At the other sat Margie Phelps, counsel for (and daughter of) Fred Phelps, whose notorious Westboro Baptist Church descended upon Snyder's Maryland funeral, waving signs bearing such startlingly offensive slogans as "Thank God for IEDs," "God Hates Fags," and "Thank God for Dead Soldiers." A federal jury had awarded Snyder nearly \$11 million for the "severe depression" and "exacerbated preexisting health conditions" that Phelps's protest had caused him.

In the Supreme Court, Phelps argued that the jury's verdict could not stand because the First Amendment protected Westboro's right to stage their protest outside the funeral. As the Court heard the case on a gray October morning, Westboro protesters marched outside the courthouse, informing onlookers that God still "Hates Fags" and advising them to "Pray for More Dead Soldiers."

Amidst that chaos, the Court found not division, but broad agreement. On March 2, 2011, it held that Westboro's slurs were protected by the First Amendment, and that Snyder would receive no compensation, let alone punitive damages, for the emotional injuries that he had suffered. Chief Justice John Roberts wrote the Court's

opinion, speaking for all of his brethren, conservatives and liberals alike—except one.

Justice Samuel Alito rejected the Court's analysis and wrote a stirring lone dissent. "The Court now holds that the First Amendment protected respondents' right to brutalize Mr. Snyder. I cannot agree." Repeatedly characterizing Westboro's protest as not merely speech but "verbal assaults" that "brutally attacked" the fallen Snyder and left the father with "wounds that are truly severe and incapable of healing themselves," Justice Alito concluded that the First Amendment's text and precedents did not bar Snyder's lawsuit. "In order to have a society in which public issues can be openly and vigorously debated, it is not necessary to allow the brutalization of innocent victims. . . . I therefore respectfully dissent."

Snyder v. Phelps would not be the last time that Alito stood nearly alone in a contentious free speech case this term. Just weeks ago, as the Court issued its final decisions of the term, Alito rejected the Court's broad argument that California could not ban the distribution of violent video games without parental consent. Although he shared the Court's bottom-line conclusion that the particular statute at issue was unconstitutional, he criticized the majority's analysis in *Brown v. Entertainment Merchants Association* as failing to give states and local communities latitude to promote parental control over children's video-game habits. The states, he urged, should not be foreclosed from passing better-crafted statutes achieving that legitimate end.

Moreover, Alito's opinions in those cases followed a solo dissent late in the previous term, in *United States v. Stevens*, where eight of the nine justices struck down a federal law barring the distribution of disturbing "crush videos" in which, for example, a woman stabs a kitten through the eye with her high heel, all for the gratification of anonymous home audiences.

A justice's dissenting opinions offer the best opportunity to peer into his judicial philosophy. Years ago, in the foreword to a collection of Justice Oliver Wendell Holmes's dissents, Dean George Kirchway of Columbia Law School remarked, "It is only at the points where Holmes' philosophy of life and of the law has clashed sharply with that of the

Adam J. White is a lawyer in Washington, D.C. WEEKLY STANDARD intern Kate Havard assisted with research for this article.



Demonstrator from the Westboro Baptist Church: Protected by the First Amendment?

majority of his colleagues that he has found it necessary . . . in winged words, to expound and justify that philosophy.” Such is the case here, where Alito sharply disagreed with not just the Court at large, but the three other conservative justices with whom he is generally lumped—and by whom he is largely overshadowed in the public eye.

Naturally, observers have grasped for explanations. One liberal pundit called Alito the Court’s “privacy cop,” albeit one who leaves the beat when corporations or (actual) cops demand otherwise. Another suggested that Alito is the “feelings justice,” even though his empathy “rarely extends to people who are not like him.”

But those speculating as to the roots of Alito’s jurisprudence need look no further than his own words—in public documents, at his confirmation hearing, and elsewhere. Justice Alito is uniquely attuned to the space that the Constitution preserves for local communities to defend the vulnerable and to protect traditional values. In these three new opinions, more than any others, he has emerged as the Court’s Burkean justice.

Before looking to the past, we must take a more precise look at the present—namely, Justice Alito’s legal reasoning in the three recent opinions that have drawn such attention.

In the funeral protest case, *Snyder v. Phelps*, the legal

question before the Court was whether the First Amendment’s right to free speech, as applied against the states, nullifies a person’s ability to sue another for the “intentional infliction of emotional distress.” While the First Amendment is well known to the general public, the latter body of law is not.

“Intentional infliction” is a common-law tort—i.e., a judge-made cause of action under state law. If someone’s aggressive conduct causes another to suffer injuries, the victim may be able to sue his aggressor in court, much as he could sue for physical assault. This is not a right to sue over mere run-of-the-mill insults; rather, as the Court explained in *Snyder*, the plaintiff “must demonstrate that the defendant intentionally or recklessly engaged in extreme and outrageous conduct that caused the plaintiff to suffer severe emotional distress.” Nor is “intentional infliction” a recent judicial invention: It was well established more than a half-century ago, with American and English origins decades older.

By the time *Snyder v. Phelps* reached the Supreme Court, the Westboro protesters disputed neither Snyder’s wounds nor the outrageousness of their own actions. “Instead,” as Justice Alito explained, “they maintained that the First Amendment gave them a license to engage in such conduct.”

And the Supreme Court’s eight-justice majority agreed.

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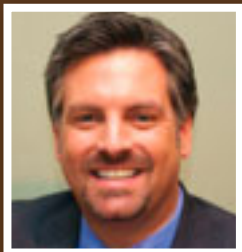
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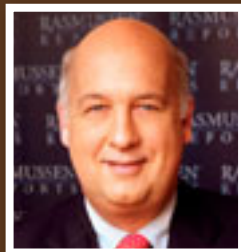
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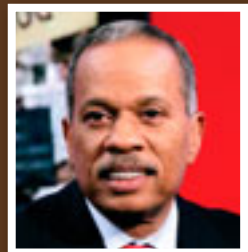
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It concluded that the Westboro protesters' speech, though couched in brutish terms and aimed at the private audience attending Matthew Snyder's funeral, "plainly relates to broad issues of interest to society at large, rather than matters of 'purely private concern.'" "While these messages"—"Semper Fi Fags" and "Fags Doom Nations," for example—"may fall short of refined social or political commentary, the issues they highlight—the political and moral conduct of the United States and its citizens, the fate of our Nation, homosexuality in the military, and scandals involving the Catholic clergy—are matters of public import."

Having concluded that the Westboro protest was core political speech "conducted peacefully . . . at a public place adjacent to a public street," the Court afforded it the First Amendment's utmost protection. Finding that the protest fit within none of the narrow exceptions for local regulation of political speech—outside a private residence, or outside an abortion clinic—the Court concluded that Fred Phelps's protesters "had the right to be where they were" and to say what they said and, accordingly, that the Maryland jury could not punish them for the harms that their protest inflicted.

Alito emphatically rejected the Court's analysis: "I fail to see why actionable speech should be immunized simply because it is interspersed with speech that is protected." Where the Court characterized the Westboro protest as political speech with injurious effects, Alito described it in precisely opposite terms. The protest was a "brutal attack," a "vicious verbal assault," no more worthy of First Amendment protection than a physical assault would be.

To Alito, the tort of intentional infliction of emotional distress is a well-calibrated means by which the local community can defend funeral attendees, the "particularly vulnerable," from such assaults. "This is a very narrow tort with requirements that 'are rigorous, and difficult to satisfy.'" And because it is a common-law tort developed on a case-by-case basis and enforced by local judges and juries, it allows local people to ascertain and enforce the standard of what is, and is not, "intolerable in a civilized community."

Justice Alito's vision of the First Amendment and local community values found no support among his brethren in the *Snyder* case. And just four months later he rejected the majority's analysis again, in another case involving the First Amendment and local protections against harmful communications: *Brown v. Entertainment Merchants Association*.

Brown (as in Governor Jerry Brown) involved California's Assembly Bill 1179, a six-year-old law barring the sale or rental of "violent video games" to minors absent parental consent. The law applied to games involving "killing, maiming, dismembering, or sexually assaulting

an image of a human being." And like *Snyder*'s tort of intentional infliction of emotion distress, the law's application turned on community values, barring those images only if a "reasonable person, considering the game as a whole," found the images "patently offensive to prevailing standards in the community as to what is suitable for minors" and without serious artistic, literary, political, or scientific value for minors.

The Court, this time led by Justice Antonin Scalia, struck down California's law as violating the First Amendment's protections. Scalia's majority opinion briskly rejected the state's arguments. First, he explained that California could not satisfy the First Amendment by modeling its law on previously Court-approved laws banning the distribution of pornography to minors, because the California video-game law was not limited to "obscene" images that traditionally receive lessened constitutional protection; instead, the California law would be tested under more exacting First Amendment standards.

Second, California failed to meet those strict standards. Rejecting the state's evidence purporting to identify a link between violent video games and harmful effects on children, the Court concluded that the studies "do not prove that violent video games *cause* minors to act aggressively"; the evidence may have shown correlation, but the Court would not accept it as proof of causation.

Scalia is well known for his sharp phrasing, and in that respect his opinion for the *Brown* majority was exemplary, dispatching California's suggestion that there is a "long-standing tradition" of limiting minors' access to violent imagery. Invoking Grimm's *Fairy Tales*—"And Hansel and Gretel (children!) kill their captor by baking her in an oven"—as well as *The Odyssey* of Homer, Dante's *Inferno*, and *Lord of the Flies* ("a schoolboy called Piggy is savagely murdered by other children"), Scalia mocked the state's assertion that interactive video games empowering children to direct on-screen murder and rape pose a unique threat: "Interactive" control of characters "is nothing new," because "choose-your-own-adventure"-style books have been available since at least 1969.

Finally, Scalia's majority opinion rejected California's argument that the law was necessary "in aid of parental authority." According to the Court, "punishing" video-game sellers "for conveying protected speech to children *just in case* their parents disapprove of that speech" is not "a proper governmental means of aiding parental authority"; in any event, California failed to convince the Court that California parents actually needed help restricting their children's access to violent video games. Noting the fact that not all parents care about whether their children buy violent video games, the Court rejected the state's power to legislate in favor of "what the State thinks parents *ought* to want."

Scalia's majority opinion spoke for five justices. Alito was not among them. He wrote his own opinion (joined by Chief Justice Roberts) rejecting the Court's entire analysis—especially its refusal to defer to state officials' attempts to protect both parents and the children whose minds and morals those parents sought to protect.

To be clear, Alito did agree with the Court's ultimate conclusion that this particular state law could not survive First Amendment scrutiny. (Accordingly, he disagreed with both of the justices who would have affirmed California's statute: Justice Clarence Thomas, who concluded that the founding generation's "freedom of speech" left parents with absolute authority to block people from communicating with their children; and Justice Stephen Breyer, who concluded that California's restrictions on speech were sufficiently narrow to pass First Amendment muster.)

But despite sharing the majority's bottom-line conclusion, Alito rejected the Court's entire analysis, and reached the same conclusion by much narrower reasons. He would have held that the state law's operative term, "violent video game," failed to satisfy the Court's precedents prohibiting unduly "vague" restrictions on speech. After quickly establishing that point, Justice Alito spent the remainder of his opinion criticizing the majority's categorical refusal to defer to California's judgment on the difficult questions of what Californian parents want, or what Californian children need, in the new world of realistic video-game violence. And he began with an unflinching call for judicial modesty when rejecting local judgment:

We should make every effort to understand the new technology. We should take into account the possibility that developing technology may have important societal implications that will become apparent only with time. We should not jump to the conclusion that new technology is fundamentally the same as some older thing with which we are familiar. And we should not hastily dismiss the judgment of legislators, who may be in a better position than we are to assess the implications of new technology. The opinion of the Court exhibits none of this caution.

In the view of the Court, all those concerned about the effects of violent video games—federal and state legislators,

educators, social scientists, and parents—are unduly fearful, for violent video games really present no serious problem. . . . The Court is sure of this; I am not.

Where the Court's majority briskly rejected the suggestion that today's Grand Theft Auto or Duke Nukem Forever so thoroughly differs in kind from, say, yesterday's *Choose Your Own Adventure: Space Patrol* as to warrant different constitutional treatment, Alito reviewed extensive evidence and argument suggesting that modern interactive video games pose an unprecedented threat to children's minds and morals. "In some of these games, the violence is astounding. Victims by the dozens are killed by every imaginable implement. . . . They cry out in agony and beg for mercy. . . . The objective of one game is to rape a mother and her daughters; in another, the goal is to rape Native American women."

Scalia's opinion for the Court criticized this "considerable independent research," asserting that Alito "recounts all these disgusting video games in order to disgust us—but disgust is not a valid basis for restricting expression." Scalia, however, misunderstood his colleague's point: The shocking degrees of violence employed in mod-



Scene from "Manhunt" video game

ern video games, combined with an unprecedented opportunity for players to interact with the images on screen, threatens problems for which past media—comic books, movies, Hansel and Gretel—simply had no analogue. Even though the particular California law at issue was unconstitutionally vague, Alito would have left room for the state to craft a narrower law, and would not permanently and categorically "squench legislative efforts to deal with what is perceived by some to be a significant and developing social problem." As in *Snyder*, Alito would have left local government free to protect parents' and children's interests.

Last—or, chronologically, first—is the "crush video" case, *United States v. Stevens*. Unlike the *Snyder* and *Brown* cases, *Stevens* nominally involved a federal law, not a state law. In 1999, President Clinton signed "Section 48," a criminal law outlawing the creation, possession, or sale of depictions of animal cruelty. But as the United States and 26 states urged in their briefs, the case implicated

myriad state laws: namely, the state animal-cruelty laws that Congress had intended to reinforce by barring the distribution of videos depicting acts of cruelty to animals.

Litigation challenging the constitutionality of Section 48 reached the Supreme Court in 2009, and the Court issued its decision late in the 2009-2010 term. As in *Snyder*, Chief Justice Roberts wrote for all of his colleagues—except Alito—in striking down the law as violating the freedom of speech. The Court concluded that Section 48 was unconstitutionally “overbroad” because it could be read as prohibiting not just “crush videos,” but also instructional hunting videos or documentaries on livestock slaughter.

Alito’s solo dissent rejected the Court’s interpretation of Section 48: Applying what he saw to be a natural and fair reading of Section 48, a video would not include “animal cruelty” merely by depicting hunting or slaughter, because “virtually all state laws prohibiting animal cruelty” do not affect lawful hunting or slaughterhouse activities. And even were that not the case, those activities would still fall within Section 48’s safe harbor for depictions that have “serious” scientific, educational, or historical value.

Alito dedicated the rest of his opinion to Congress’s judgment that videos of animal cruelty needed to be regulated in order to support effectively state laws barring the act of animal cruelty. “In light of the practical problems thwarting the prosecution of the creators of crush videos under state animal cruelty laws”—the ability to identify on-camera perpetrators whose faces were obscured, for example—“Congress concluded that the only effective way of stopping the underlying criminal conduct was to prohibit the commercial exploitation of the videos of that conduct.”

In that respect, Alito’s view of “crush videos” presaged his later view on the Westboro funeral protests: The perpetrators were not simply speakers whose communications had incidental physical effects; they were actors, and government efforts to prohibit their deeds necessarily curtailed their communications. “The First Amendment protects freedom of speech, but it most certainly does not protect violent criminal conduct, even if engaged in for expressive purposes.” Alito was willing to defer to state judgments as to how “animal cruelty” would be defined and regulated, and to Congress’s judgment in supporting the states’ collective efforts.

A review of Alito’s *Snyder*, *Brown*, and *Stevens* opinions quickly suggests the common theme: Alito, more than any of his colleagues, would not allow broad characterizations of the freedom of speech effectively to immunize unlawful actions. He sharply criticized the Court for making generalized pronouncements on the First Amendment’s reach, when the Court’s reiterations of theory glossed over the difficult factual questions that had given

rise to regulation in the first place—whether in grouping brutal verbal attacks with protected political speech; or in equating interactive Duke Nukem games with the text of Grimm’s *Fairy Tales*; or in extending constitutional protection to the video of women illegally crushing animals. And Alito was particularly sensitive to the Court’s refusal to grant at least a modicum of deference to the local communities and state officials who were attempting to protect their populations against actions that they found so injurious as to require state intervention.

In sum, those cases cast into stark relief the difference between Alito’s judicial instincts and those of his three conservative brethren. And for that reason, many onlookers have begun to seek the roots of Alito’s own particular conservative judicial temperament.

They are not hard to locate. In fact, he reiterated them under klieg lights at his Supreme Court confirmation hearing. He had no choice but to explain himself, as senators questioned him on a letter he’d written 20 years before.

In November 1985, Samuel Alito was a 35-year-old assistant to the U.S. solicitor general, arguing Supreme Court cases on behalf of the Reagan administration, when he applied for the open position leading the Department of Justice’s Office of Legal Counsel, the office charged with resolving the most difficult questions of constitutional law for the executive branch. To prove his conservative bona fides he wrote a letter laying out the roots of his conservatism:

When I first became interested in government and politics during the 1960s, the greatest influences on my views were the writings of William F. Buckley, Jr., the *National Review*, and Barry Goldwater’s 1964 campaign. In college, I developed a deep interest in constitutional law, motivated in large part by disagreement with Warren Court decisions, particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment. I discovered the writings of Alexander Bickel advocating judicial restraint, and it was largely for this reason that I decided to go to Yale Law School.

And, Alito urged, “I believe very strongly” in “the legitimacy of a government role in protecting traditional values.”

As a piece of advocacy, young Alito’s letter succeeded in convincing its audience. (He got the OLC job.) But 25 years later, it stands for much more, pointing the reader to at least three themes and influences that manifest themselves in Justice Alito’s opinions: government’s legitimate role in “protecting traditional values”; the thought of Yale professor Alexander Bickel, a Burkean conservative whose work was largely overshadowed by the emergence of modern “Originalist” jurisprudence; and the Warren Court’s reapportionment cases, which Alito’s father had the job of implementing in New Jersey.

Alito's 1985 letter did not go unnoticed at his Supreme Court confirmation hearings. After it was retrieved from the Reagan Presidential Library, Senate Democrats and outside critics seized upon it as evidence of radical right-wing views, especially his alleged opposition to the 1960s Warren Court's electoral districting principle of "one person, one vote."

But for all of the controversy that the letter sparked, its reference to "traditional values" went almost unnoticed, at least at the Senate confirmation hearing. The only person who raised the subject was Senator Herb Kohl, who on the first day of questions pressed Alito to explain "what traditional values" he was referring to and "who decides."

After insisting that he could only try "to remember what I thought about that 20 years ago," Alito explained it in terms that could easily have been found in his *Snyder*, *Brown*, and *Stevens* opinions five years later:

I think a traditional value that I probably had in mind was the ability to live in peace and safety in your neighborhood. . . . I think the ability of people to raise a family and raise their children in accordance with their own beliefs is a traditional value. I think the ability to raise children in a way that they are not only subjected to—they are spared physical threats but also psychological threats that can come from elements in the atmosphere is a traditional value. I think that the ability to practice your own conscience is a traditional value.

Senator Kohl did not follow up his question until the next day, when he called Alito's answer "somewhat incomprehensible" and asked him to further expand upon "traditional values." Alito largely reiterated his original answer, couching it in terms of what he might have thought were "traditional values" in the 1980s, when the letter was written.

By focusing on what Alito thought to be "traditional values" in 1985, both the senator and the nominee obscured the more important point. Of course it is interesting, especially after the most recent Supreme Court term, to hear Alito's discussion of why he thought "traditional values" included parents' authority to shield their children from the "psychological threats" posed by inappropriate influences.

But even more significant was the broader point made in Alito's 1985 letter: that he believed "very strongly" in "the legitimacy of a government role in protecting traditional values." Alito believed then—and now, evidently—that the Constitution ultimately afforded government bodies some space to identify what their particular communities deemed to be "traditional values" and to preserve those

values against the threat of outside attack. And from the rest of his letter, and his attempt to explain that letter decades later, it is clear that the government actors that Alito had in mind were, first and foremost, the state and local officials who grapple daily with difficult questions of right and duty, aggressor and victim.

Judging from his 1985 letter, Alito's support for the government's legitimate defense of "traditional values" appears to be a predisposition that predated his education in the law. But his turn to legal theory, first at Princeton and then at Yale Law School, brought him to the next influential figure whose legacy is seen in Alito's recent First Amendment opinions.

In the 1960s and '70s, Yale's Alexander Bickel was one of America's most respected and influential legal scholars. He wrote a series of widely read books, law

review articles, and essays in *Commentary*, the *New Republic*, and the *New York Times*. Today he is utterly forgotten, at least among the general population. Justice Alito is his last heir.

Born of Jewish-Romanian immigrants, Bickel graduated summa cum laude from Harvard Law School, clerked for Justice Felix Frankfurter, and joined the Yale faculty in 1956. But he rose to prominence with the publication of his second book, *The Least Dangerous Branch*. In that volume, which drew its name from Alexander Hamilton's *Federalist* 78, Bickel reassessed the Court's

constitutional role in the aftermath of *Brown v. Board of Education*'s then-controversial school desegregation order. Because the Court is a counter-majoritarian force in American politics, he argued, the Court must exercise "the passive virtues," deciding constitutional issues only when truly necessary. Instead of jumping headlong into heated political disputes, the Court's justices, who (ideally) have "the leisure, the training, and the insulation to follow the ways of the scholar in pursuing the ends of government," should take care to act as "the pronouncer and guardian" of the nation's "enduring values."

In *The Least Dangerous Branch* and other writings, Bickel laid out a theory of the Court and Constitution utterly distinct from the Originalist theories that Robert Bork, Raoul Berger, Antonin Scalia, and others brought to prominence in the 1970s and 1980s. Originalism is a jurisprudence founded on a theory: that judges can ascertain a legal text's

Alito's support for the government's legitimate defense of 'traditional values' appears to predate his education in the law. But his turn to legal theory at Yale brought him to the influential scholar Alexander Bickel, whose legacy is seen in Alito's recent First Amendment opinions.

original public meaning and should apply that meaning to decide the case before them. Bickel's conservatism, by contrast, was not Originalist—it was avowedly Burkean. “The Whig model” of judging, Bickel wrote,

begins not with theoretical rights but with a real society, whose origins in the historical mists it acknowledges to be mysterious. . . . It judges how readily and how far men can be moved by means other than violent, that is to say, how far they can be moved by government. . . . Limits are set by culture, by time- and place-bound conditions, and within these limits the task of government informed by the present state of values is to make a peaceable, good, and improving society.

Before Originalism became the conservative movement's predominant jurisprudence, Bickel's writings were highly regarded on the right; George Will reviewed Bickel's criticism of the Warren Court's activism and the left's Nixon-era mania and declared him “the keenest public philosopher of our time.”

Bickel's work moved Alito, too. Specifically, the young man discovered Bickel's fifth book, *The Supreme Court and the Idea of Progress*, published halfway through his undergraduate study at Princeton. It “was probably the first book about what you might call constitutional theory that I had read,” he said at his Senate confirmation hearing; Bickel “was a great proponent of judicial self-restraint, and that was the main point that I took from my pre-law school study of the Warren Court.”

That book's influence is easily seen in Alito's *Snyder*, *Brown*, and *Stevens* opinions. Bickel wrote at the close of the Warren Court, and as he looked back upon the Court's aggressive 1960s constitutional activism, he found that its eagerness to intervene had too often undermined the Court's own laudable goals.

The principles the Court has adopted are not irrational, they are not unfit for judicial pronouncement. . . . The lesson, rather, is that in dealing with problems of great magnitude and pervasive ramifications, problems with complex roots and unpredictably multiplying offshoots . . . the society is best allowed to develop its own strands out of its tradition . . . in all its contradictions . . . as it retreats and advances, shifts and responds in accordance with experience, and with pressures brought to bear by the political process.

Or, to borrow a recent example, better to let states and local communities grapple with the new problem of super-violent, interactive video games, at least for a while, than to announce prematurely a national constitutional rule that frustrates broad segments of society holding good-faith concerns.

But reading Alito's opinions, it is hard not to speculate that he was even more directly affected by something else that Bickel wrote. Just months after Alito began his

study at Bickel's law school, Bickel published an essay in *Commentary* on the question of free speech and social unrest. And shortly after Bickel died, during Alito's third year at Yale, an adapted version of the essay was published in his posthumous volume, *The Morality of Consent*.

In his essay, Bickel criticized the Supreme Court's eager grant of broad constitutional protections to the 1971 publication of the Pentagon Papers and other incitements and acts of disobedience, as well as obscenity, because they involved speech or publication. Just as Alito's *Snyder* dissent rejected the idea that a protest is not an act that can be regulated and punished, but speech that receives constitutional protection, Bickel urged that “there is no bright line between communication and conduct. What is a live sex show—communication or conduct?” Rather than preempting all state and local efforts to handle the problem of obscenity and other difficult intersections of speech and conduct, “the Supreme Court, while exercising procedural oversight, ought to let state and local governments run the risks if they wish. For the stakes are high.”

Justice Alito could have written those words himself, in his First Amendment opinions. On questions of the Constitution, the Court, and the lower levels of government, no other justice is so temperamentally attuned to Bickel's work.

To the young Alito, Bickel's arguments rang true not just in the abstract; he had witnessed them in action, in his very own home. Responding to Senator Kohl at the confirmation hearing, he explained why Bickel's criticism of the Warren Court caught his attention: Bickel's book *The Supreme Court and the Idea of Progress* “addressed the issue of one person, one vote, and that linked up in my mind with the experiences of my father in working on the reapportionment of the New Jersey legislature.” That story, of Samuel Alito Sr.'s work in New Jersey's redistricting debates, was told by many while Samuel Alito Jr. was enduring the confirmation process.

In 1964, the Supreme Court declared that the Fourteenth Amendment's guarantee of “the equal protection of the laws” required the states to obey the rule of “one person, one vote” and redraw their electoral districts to ensure that every legislative seat represented a similar share of the population. The rule eliminated the states' longstanding practice of drawing districts that gathered large groups of urban voters into a few urban districts, thus giving rural voters disproportionately large voices in the legislature.

Even setting aside the acrimony that arose in response to *Reynolds v. Sims*, the Court's announcement of the “one person, one vote” standard posed an excruciatingly

difficult practical question: How would states actually implement that rule and draw those districts?

In New Jersey, the task largely fell to Samuel Alito Sr., a registered Republican, who ran the state legislature's nonpartisan Office of Legislative Services from 1952 to 1984. As *Roll Call* explained in 2005, Alito Sr. had the job of periodically adjusting New Jersey's electoral districts. After the *Reynolds* decision and a 1966 state constitutional convention reorganizing the state's two legislative houses, he took a leading hand in redrawing the district lines to reflect each new Census.

That work was a study in the contrast between the clarity with which the Supreme Court announces a broad new constitutional doctrine, and the much more complex realities that attend putting the new rule into practice. In *The Supreme Court and the Idea of Progress*, Bickel highlighted many of the theoretical and practical problems that the Court's sweeping new rule introduced.

But to see those problems, Samuel Jr. needed look no further than the family home. "In his bedroom at night as a boy, Judge Alito told senators, he could hear his father clicking away at a manual calculator as he struggled to redraw the state's legislative districts with equal populations," the *New York Times* reported in 2005.

The ultimate fruit of his father's work was often challenged in New Jersey court, where Alito Sr. would testify as an expert witness. (His testimony was so precise and well done that one judge, Leonard Garth, recognized the Alito name on a clerkship application years later and promptly hired Samuel Jr. to clerk for him on the Third U.S. Circuit Court of Appeals.) One of those cases, *Karcher v. Daggett*, ultimately reached the U.S. Supreme Court in 1983, leaving a record of Alito Sr.'s work in the Court's archives. The case appendix lays out page after page of the father's analysis of various redistricting proposals, estimating to the ten-thousandth of a percentage point each proposed district's deviation from the average population.

In short, "one person, one vote" was easier said than done. Even someone who agreed with the principle—as Alito affirmed he did in his confirmation hearing—could see that broadly stated constitutional principles risk glossing over the facts that would complicate their application in actual communities. And, as Bickel warned, sometimes those complexities, and their results, are so counterproductive that they outweigh any good the Court wished to do in the first place—perhaps not in "one person, one vote," but certainly in other areas of the

law. Justice Alito has shown himself to be uniquely well attuned to those warnings.

To be clear, the gulf between Justice Alito's jurisprudence and that of his conservative colleagues should not be overstated. Like Chief Justice Roberts and Justices Scalia and Thomas, Alito goes about the task of constitutional interpretation by looking to "our law," "our traditions," and the Court's precedents, as he explained at his confirmation hearing. Employing those tools, he more often than not finds himself in agreement with the other conservatives in constitutional disputes.

Nor is his deference to state and local governments unbounded. In cases where the facts clearly are not on the state's side, or where the constitutional dispute and

regulations at issue have been in place long enough for the Court to act with prudence, Alito can be expected to act decisively.

The clearest example of this is last year's *McDonald v. City of Chicago*, where Alito wrote for the five-justice majority striking down Chicago's handgun ban as violating the Second Amendment right to keep and bear arms. In that case, where (as Alito noted at the outset of his opinion) Chicago's enactment of the handgun ban was followed by an increase in the

murder rate, and where the Court's previous decision in *Heller* left little room for novel constitutional interpretation, Alito was unwilling to give local officials the benefit of the doubt.

But the difference between Scalia's and Thomas's particular brands of Originalism and Alito's own mode of constitutional decision-making is very real, and it will continue to manifest itself in interesting ways.

"The whole scheme of our mixed constitution," said Edmund Burke of England's law, "is to prevent any one of its principles from being carried as far as, taken by itself, and theoretically, it would go." Bickel urged our Supreme Court to put that lesson into practice by proceeding with restraint, never racing to displace prematurely the states and local communities as the first guardians and implementers of our rights, duties, and traditions. Schooled in those lessons, and with the firsthand benefit of his father's work, Alito is the Court's clearest expounder of Burkean prudence and judicial restraint. His opinions in *Snyder*, *Brown*, and *Stevens* may be his best recent examples of that sensibility, but they will not be his last. ♦

The difference between Antonin Scalia's and Clarence Thomas's particular brands of Originalism and Samuel Alito's own mode of constitutional decision-making is very real, and it will continue to manifest itself in interesting ways.

The Rethinking Man's Candidate

Meet Jon Huntsman

BY ANDREW FERGUSON

Covering political campaigns can be a dull, remorseless duty, but at least the reporters who gathered in Liberty State Park, New Jersey, on June 21 to see Jon Huntsman announce his presidential candidacy have this compensation: Someday they'll be able to chuck their grandchildren under the chin and tell them, "Yes, kids, I was there when the Huntsman campaign peaked."

The setting for the announcement was meant to be highly inspiring. A small, flag-bedecked stage had been built at the tip of a vast lawn jutting out into the Hudson River. The skyline of lower Manhattan and, more symbolically, the Statue of Liberty rose just beyond, through a scrim of early morning haze. By my rough estimation, newsfolk outnumbered normal people, who in turn narrowly outnumbered the political consultants, low-level politicians, and other hangers-on that always attend the launch of a presidential campaign, when the breezes still carry the springtime scent of fresh, unspent money.

Among the campaign's consultants was the adman Fred Davis, a veteran of various John McCain campaigns who most recently gained fame for the mysterious "demon sheep" ad he produced for the California senatorial candidate Carly Fiorina last year. (The ad featured a pasture full of sheep and a guy in a sheep's costume and was, of course, catnip to bored-stiff reporters but less appealing to voters, whose sensibilities haven't yet evolved into postmodernism, even in California.) I see that the 2012 Political Reporter's Stylebook requires that upon first reference Davis must be called "unconventional," although "maverick" is allowed as a substitute under some circumstances. True to form, the scene Davis staged for Huntsman's announcement was unconventional in the conventional manner.

The event had the feel of an unsubtle satire dreamed up

by some snotty 1970s aging-hippie movie director—Robert Altman, say—to prove that political candidates are just pretty-boy airheads engaged in a show-biz sham. In addition to the lifted lamp of Lady Liberty and the overdone backdrop, there was the handsome candidate and his excellent hair, tossed Kennedily by a gentle wind off the river. There was the lovely wife wreathed in smiles, accompanied by a raft of offspring who looked as if Madame Tussaud's "Brady Bunch" exhibit had sprung wondrously to life.

Large speakers played a boneless soundtrack of soft New Age rock, part Kenny G, part early 1980s porno. On a video screen across from the stage, solitary words shimmered in and out of focus against a western landscape: Vitality. Comfort. Home. Tough. Calm. (You're getting sleepy, sleepy . . .) A recorded voice familiar from a dozen car commercials read the words as they appeared. Then another voice directed everyone's attention to a point 100 yards away, across the endless lawn. The cameras turned. And there they were: a line of grinning Huntsmans, lined up and holding hands. At a cue from an inconspicuous advance man, the family began walking, slowly, slowly, hand in hand across the lawn. All that stood between them and the massed rank of cameras was a towering monument in the center of the field, dedicated to the veterans who had liberated the death camps in World War Two.

The music thrummed. The Huntsman flotilla drew closer still, at the pace of an old Clairol commercial. And just as the little voice inside everyone's head was silently screaming, "Don't do it, please don't don't don't *don't* do it," they did it: The entire family paused in front of the statue and gazed heavenward, some with their arms around each other, some bowing their heads. And then, toeing a line of masking tape the advance men had laid down for them just out of sight, they resumed their march toward the stage, into the bright dawn of America's tomorrow. It took forever.

When at last he reached the podium, Huntsman began his speech with brief bio notes: He's been governor of Utah, ambassador to China and Singapore, a businessman, and now, as of this minute, a presidential candidate. He then let out a series of boldly phrased, unvarnished assertions that

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no one in his right mind would disagree with. “What we now need,” he said, is “leadership that knows we need more than hope, leadership that knows we need answers.” “We must make the hard decisions.” “We can and will own the future.” The future holds challenges, sure, but also possibilities. “We’re choosing whether we are to be yesterday’s story or tomorrow’s.” It’s time to choose. “Now it’s our turn.”

And: “Our problems are no bigger than our opportunities.”

Mr. Altman? Is that you?

If the announcement speech had a notable theme, it was that Huntsman would run a campaign based on civility. “We will conduct this campaign on the high road,” he said, drawing a stark contrast with those candidates who publicly vow to conduct their campaigns on the low road. With its own advertised civility at its core, Huntsman’s campaign will thus be a campaign about itself, in the Obaman fashion.

It’s not an exciting theme, but Huntsman is not an exciting candidate, by both nature and design. Consultants like Davis have tried hard to add drama and color to his—forgive the term—narrative, in an act of myth-building. Unfortunately for them and him, he is not a man who has lived a dramatic life. He grew up the son of a wealthy businessman and his homemaker wife in the suburbs of Salt Lake City. He married early and once. He went to the Wharton school. He’s a Mormon. He made his millions working in the company his father built.

But reporters writing Huntsman profiles now know to include a handful of details that his campaign hopes will prove diverting. This isn’t just any Mormon! He rides Harleys and likes to eat at greasy spoon restaurants. He attends motocross events and listens to the Foo Fighters with sincere enthusiasm. He dropped out of high school, though he

quickly earned his GED, and played keyboards in a rock band that specialized in playing REO Speedwagon songs (some colorful facts you’d think the handlers would want to keep quiet). He became fluent in Mandarin Chinese after spending two years on a Mormon mission in Taiwan as a young man. Before college he worked as a dishwasher and a busboy at Marie Callender’s, where he met his wife Mary Kaye. Two of the Huntsmans’ seven children are adopted, one from China and one from India.

Each of these bits of color has been duly noted in the press stories that have launched his campaign. The political tip sheet *Politico* even published an article called “Jon Huntsman, the Rock ‘n’ Roll Years,” though a more accurate headline would probably say “the Rock ‘n’ Roll Months.” Thanks to the careful mythmaking of Davis and others, you are much more likely to read that Huntsman worked as a fast-food drudge (worldly experience) than that he made Eagle Scout (typical Mormon). Anyone who still holds to the notion of a cynical press corps will have to dodge the puffers political reporters have lobbed at Huntsman in the months leading up to his announcement.

“He just might be the most formidable standard-bearer the Republicans could field against Obama,” said *New York* magazine, without evidence. “The GOP’s Cool Uncle,” said the *Atlantic* (Harley, rock band). “Cerebral, cautious, civil, and, yes, cool,” said *Newsweek* (Harley, good looks). “Cool-and-cerebral,” said *Time*. If he had a

deficiency, according to press reports, it’s that he’s too good for his own good. “Is there room for such civility on the national stage?” *Time* wondered.

This last point helps show why the mainstream press has found Huntsman so attractive. He’s a throwback to a golden era—that moment when the world was young, in late 2008 and early 2009. Obama had been elected and the Republican party had been repudiated. The consensus among the press was that the debacle of 2008 would require



a great rethinking on the part of Republicans, and many Republicans agreed. So dire was the party's condition that many Republican chin-pullers resorted to hyphens, calling themselves "progressive-conservatives" or "reform-minded Republicans," anything but plain conservative Republican. Having just been reelected in Utah with a 58-point margin of victory even as other Republicans fell all around him, Huntsman was squarely with the rethinkers. It was back to the old drawing board, Huntsman said at the time. He called for "a broad discussion about the future of the party." Huntsman is the rethinking man's candidate.

"It's like the world began in November," he said in early 2009. "The old ethos world view—all that's been decimated."

The euphemisms here require translation: The "old ethos world view" meant conservative positions on various questions, and "rethinking" meant abandoning the conservative positions and adopting positions more congenial to Democrats, especially on immigration reform, global warming, environmental regulation, and gay marriage, to "broaden the party's base." In a series of interviews Huntsman compared the 2008 Republican party to the Tories of the 1990s, a "very narrow party of angry people." He said the party was "anti-science." To the *New Republic* magazine he lamented that the party did not attract more people "who are the intelligentsia." He criticized congressional Republicans for criticizing President Obama's stimulus bill. The party needed to "come at it in a different way" and forsake its "empty words." In place of the old empty words, Huntsman had low-cal substitutes of his own: "We need visionary—I hate the word proactive—but proactive leadership that has a sense of boldness based on real ideas that put the country first as opposed to party."

Lucky for Republicans, the "broad discussion about the future of our party" never took place. Instead, Obama's liberalism gave them a chance to position themselves as unhyphenated conservatives, the kind that existed before rethinking. (It's good to remember that the Bush-era party the rethinkers wanted to rethink was itself a product of rethinking, a hyphenated conservatism called "big-government conservatism.") In 2010 Republicans were swept back to power without moving a muscle, ideologically, and the issues that Huntsman wanted to place at the top of the party's agenda, education and the environment, have fallen

low on the list of voters' concerns, as they always will when times are rough. Matt Bai in the *New York Times* compared Huntsman the 2011 presidential candidate to a cave man transplanted from his own time to ours. From early 2009 to 2011 is hardly a geological epoch, but it's true—to switch metaphors—that as 2012 approaches the rethinking man's candidate looks like last year's model.

Huntsman seems to have missed something big in the landslides of 2010. The reason for his Rip Van Winkle aura, to use still another metaphor, is that Huntsman spent most of the Obama administration out of the country. Just as Huntsman was strapping on his rethinking cap, in the spring of 2009, President Obama appointed him ambassador to China, an offer he accepted without failing to note that this act of bipartisanship was just the kind of thing

the American people hungered for from their leaders. He hand wrote a polite thank you note to President Obama, calling him a "remarkable leader"—which is not the kind of thing the Republican people hunger for from their presidential candidates.

Huntsman was only a few months into his second term as governor when Obama chose him for China. Back home his approval rating stood at 80 percent. But he had already begun to tire of Utah, at least politically.

"As soon as he was reelected, he couldn't get out of here fast

enough," says Paul Rolly, a veteran political reporter for the *Salt Lake Tribune*. "He'd just lost interest." After his reelection, Rolly says, Huntsman declined to attend a single Lincoln Day dinner held by Utah Republicans.

Others noticed a change, too. Dave Clark served as speaker of the Utah House of Representatives during Huntsman's governorship and counts himself an admirer.

"His first term he governed with good conservative principles," Clark says, "what I call Utah values." Utah is the most Republican state in the country. It hasn't had a Democratic governor in nearly 30 years, and Republicans hold supermajorities in both legislative chambers. If the governor had taken an extra Ambien the night before his inauguration in 2004 and slept for four years, the state would still have been governed with good conservative principles. But Huntsman early on was intent on being, as he would hate to say, "proactive."

His signal achievements were lowering the graduated state income tax from a high of 7 percent to a flat 5 percent, effectively eliminating the state sales tax on food, and



The Huntsman family at Liberty State Park, June 21

signing a series of pro-life bills that severely circumscribed access to abortion. He submitted balanced budgets, as he was required by law to do, and, during the flush years before the 2008 troubles, piled up an impressive rainy-day fund. An ambitious attempt to reform the state's health care system has cut the number of uninsured children from 8.5 percent to 5.9 percent. The overall percentage of uninsured Utahns remains the same, though that alone counts as an achievement during an economic downturn.

According to a recent investigation by the *Salt Lake Tribune*, an early draft of the governor's health care reform bill contained a mandate that all Utahns buy health insurance or face penalties. "Mandate," of course, has become the toxic word in Republican health care debates and the chief ideological transgression of Mitt Romney's health reform in Massachusetts—and a handy cudgel Huntsman uses to whomp the frontrunner, civilly. The *Tribune's* Kirsten Stewart and Heather May found that in Utah the mandate was only abandoned "in the face of opposition from conservative lawmakers."

"The governor did not engage in every issue that came along," Clark says. "He'd allow the legislature to go its own way. But then when he decided he was interested in something he would step in, and at that point I learned never to underestimate the governor. He was very charming, very reserved, and very effective."

Then came the 2008 landslide.

"After he was reelected, there was a more moderate side to Governor Huntsman that showed itself," Clark says. "Some part of him is rooted in good conservative principles, the Utah values. Another part, a smaller part, is a little more moderate."

In his first campaign, in 2004, Huntsman supported Amendment 3, a constitutional amendment defining marriage as a union between a man and a woman. It was one of the few points of contention between him and his Democratic opponent, who went so far as to express "concerns" with some of the wording of the amendment. (In Utah, even Democrats hold to Utah values.)

Five years later, after his reelection, Huntsman was asked about a "civil unions" bill being introduced in the state legislature and said he could support it, though the bill had no chance of becoming law. "That was a difference I had with the governor," Clark says mildly. Huntsman's support did nothing to dim his general popularity. And neither did another act of heresy: his support, as governor, for the Western Climate Initiative, in which he joined with four other Mountain State governors to commit their states to . . .

. . . well, it's not clear what the WCI would commit the states to, as a practical matter. It has been characterized by the (also toxic) phrase "cap and trade," meaning that the right to emit greenhouse gases would be auctioned off at

ever accelerating prices, eventually reducing emissions drastically. The WCI, festooned with "goals" and "timetables" and scientific projections of admirable specificity, is the kind of gesture that climate-change enthusiasts favor: grandly phrased, sweeping in its ambition, rooted in moral outrage, and utterly without effect.

Huntsman's campaign declined *THE WEEKLY STANDARD's* requests for an interview, but he has told reporters that cap and trade is no longer a workable option because our frail economy would not be able to absorb the heavy regulation the program would require. It's a prudent shift in position for a politician who says he believes that global warming is caused by human activity—but who also believes that a healthy economy is a precondition for environmental improvement.

A belief in global warming is no longer the approved Republican position, however, as Huntsman and Romney, another climate-change heretic, now painfully recognize. Just as Democrats pretend that political questions ("Should the government tear apart human embryos for medical research?") are really scientific questions, Republicans pretend that scientific questions ("Is global warming real and if so what's causing it?") are political questions, and they judge their candidates accordingly. Huntsman has not allowed his free-market principles to color his reading of the scientific literature, and many Republicans won't forgive him for it.

His deviationism is one reason why Huntsman's campaign can be said to have peaked on that hazy morning in Liberty Park. The other reasons were on display there, too: the hoary rhetoric, the overpackaging that can't quite obscure the obvious lack of anything fresh to say. Things started going downhill at once. The cable news networks, which had planned to carry the event live, returned to regular programming before Huntsman's speech was over. Many of the TV cameras had been mispositioned and couldn't capture the candidate and Lady Liberty in the same shot: He might as well have stayed in Utah. He made only one other appearance on announcement day, flying to New Hampshire to appear at the Exeter Town Hall. The buses carrying candidate, staff, and reporters were shuttled to the wrong chartered plane. When they found the correct plane, the pilot had gone missing. The event in New Hampshire drew a small crowd that kept its enthusiasm well short of a frenzy. TSA screeners held up the return flight from New Hampshire for 40 minutes. When the candidate himself came to the back of the plane for the inevitable chat with the press, hoping to lay out his vision for the future, he spoke so softly that most of the reporters couldn't hear him.

Sometimes, in a presidential campaign, the problems really are bigger than the opportunities. ♦



Maurice Ravel (at the piano), George Gershwin (right), 1928

A Moderne Master

'Who can unravel Ravel?' BY GEORGE B. STAUFFER

In April 1928 Maurice Ravel received a request from the dancer Ida Rubinstein to orchestrate several piano pieces from Albéniz's *Iberia* for a new ballet she wished to present at the Paris Opéra. Parisian audiences were entranced by jazz and Spanish music, and Ravel, in

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Ravel
by Roger Nichols
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addition to being a brilliant orchestrator, had employed both idioms in his own works. He was the ideal choice for the commission, and the timing was perfect, since he was in need of additional income for the ongoing

renovations of Le Belvédère, his new home outside Paris. When permission problems thwarted the *Iberia* plan, Ravel decided instead to compose something of his own, an original work that would combine the swing of cabaret music with the form of the Spanish fandango, a Baroque dance featuring (as one early writer put it) "the most indecent gesticulations that can be conceived."

From these circumstances sprang

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Ravel's best-known and most controversial work, *Boléro*. At the premiere the following November, the Opéra audience was treated to seeing Rubinstein, cast as a Spanish gypsy in a dingy tavern in Madrid, perform a writhing, sensuous dance on a large table before an enraptured group of drinking men. According to one witness, her gestures grew wilder and wilder with the hypnotic repetitions and growing crescendo of Ravel's score. The men drew closer, beating on the table and eventually mounting it to take part in the frenzied conclusion. Choreographed by Bronislava Nijinska of the Ballets Russes, the dance was both riveting and shocking, and the audience wasn't sure what to make of it. But one thing was certain: Ravel's music was a scandal, and an instant hit.

Edward Robinson declared *Boléro*

the most insolent monstrosity ever perpetrated in the history of music. From the beginning to the end of its 339 measures, it is simply the incredible repetition of the same rhythm ... and above it the blatant recurrence of an overwhelmingly vulgar cabaret tune that is little removed, in every essential of character, from the wail of an obstreperous back-alley cat.

Hollywood, by contrast, loved it, and in 1934 released the full-length film *Bolero*, which told the story of Raoul De Baere (George Raft), an ambitious dancer from New York who exploits two assistants (played by Carole Lombard and the famed exotic dancer Sally Rand) in an attempt to revive his career after serving in World War I ("His dancing partners were but stepping stones to fame!" proclaimed the poster). In the film's climax, De Baere overexerts himself dancing to *Boléro* in an effort to win over his audience. He collapses afterward in his dressing room, and expires.

The sociologist Serge Gut perceived a deeper meaning to *Boléro*. To him, it represented "the repetitive obsession that opens ... notions of death, madness, destruction, and annihilation, as if the composer had had an apocalyptic vision of the end

of the world." Ravel himself was less metaphysical: To an elderly woman who yelled "Rubbish!" at the premiere, he famously responded, "She got the message." To fellow composer Arthur Honegger he confided, "I've written only one masterpiece—*Boléro*. Unfortunately, there's no music in it."

What is one to make of *Boléro* and its composer? Is the piece a great work, or a practical joke? Was Ravel France's greatest 20th-century composer (as Prokofiev once claimed) or was he the creator of meticulously crafted exotic oddities whose beauties resemble "markings on snakes and lizards" (as the *Times* of London once stated)? How is one to sort this out? As a perplexed Boston reviewer once asked: "Who can unravel Ravel?"

A brave attempt is made in this encompassing new biography by Roger Nichols, a Ravel scholar of long standing and lecturer at the Royal Welsh College of Music and Drama. Expanding on his much shorter study, released for the Ravel centennial in 1975, Nichols returns to the composer's life story, this time drawing on the letters, writings, and interviews recently edited by Arbie Orenstein. These documents provide intimate insights into Ravel's day-to-day activities and compositional projects. In a series of neatly parceled chapters, Nichols walks through Ravel's life year-by-year, event-by-event, weighing the developments with a precision and detachment that mirrors the composer's own personality.

Ravel was born in 1875 in the Basque village of Ciboure, the first child of Pierre Joseph Ravel, a Swiss engineer, and his Basque wife Marie Delouart. Although the Ravels soon moved to Paris, Maurice retained much of his mother's love for Basque language and culture, and things exotic. Ravel showed early signs of musical talent and entered the Paris Conservatoire as a piano student, at age 14, in 1889. There he made notable progress, winning his first medal when he was 16 and eventually gaining the opportunity to study composition with Gabriel

Fauré and counterpoint with André Gedalge, two of the institution's most venerable instructors. A series of increasingly brilliant works followed in rapid succession: the *Shéhérazade* overture in 1898, *Pavane pour une infante défunte* in 1899, and finally, in 1901, the remarkable *Jeux d'eau*, the piano piece that marked Ravel as cofounder, with Claude Debussy, of musical impressionism.

But as Nichols underscores, the Conservatoire's top prize, the coveted *Prix de Rome*, remained elusive. Ravel won second place in 1901 but his other attempts—there were four more—were unsuccessful. In the final try of 1905 Ravel was eliminated in the preliminaries, and when a subsequent investigation revealed that the six finalists were all pupils of a jury-panel member, the head of the Conservatoire, Théodore Dubois, was forced to resign. Ravel stayed above the fray and quickly moved on to new works. But "L'affaire Ravel," as the event came to be known, marked the young composer as a figure outside the establishment.

A central premise of Nichols's account is that Ravel remained an outsider, despite the success of his compositions. He simply didn't fit in. A dapper dresser, he practiced the life of a cultivated dandy, immaculately attired and meticulous about his appearance. Ravel was known for his cold, emotionless greetings and his clinical manner of playing and conducting. He had a wide circle of friends but no intimate attachments other than his strong tie to his mother. He lived at home with her until her death, moving into a house of his own only at age 45. And Le Belvédère was well distanced from Paris, lying 30 miles to the southwest in the small village of Montfort l'Amaury.

Ravel never married, and he seemed most comfortable in the company of male companions such as the Catalan pianist Ricardo Viñes (who premiered many of the piano works) and the sculptor Léon Leyritz (who accompanied Ravel on trips late in life). He was very happy to help the governess of Ida and Cipa Godebski look after

their children, or play water war as a 50-year-old with a young Charles Harding (“Jeux d’eau,” he explained to Harding’s parents). Nicholas concludes that Ravel was not gay but sexually neutral, a creative artist who retained many of the childlike qualities that he portrayed in his music.

Also contributing to Ravel’s youthful image was his physique: He was thin and somewhat frail (he was judged underweight for normal

portrayal of musical life in turn-of-the-century Paris. Just as Vienna had been the indisputable center of European musical life in the 19th century, Paris emerged in the 20th as its worthy successor, hosting a vast array of composers, both native and foreign. Music was performed, discussed, and written about to an unprecedented degree. Even Ravel, normally reticent to engage in public discussion, served for a time as a music critic for

pated in convention-breaking events on an almost weekly basis. (Ravel’s innovative opera *Daphnis et Chloé* made little impression on its opening night because Debussy’s *L’après-midi d’un faune*, with Nijinsky’s risqué choreography, had premiered just 10 days earlier.)

The number of gifted composers working in Paris was dizzying, ranging from impressionists such as Debussy, Gabriel Fauré, and Ravel to traditionalists such as Camille Saint-Saëns, Gabriel Pierné, and Jacques Ibert to iconoclasts such as Erik Satie, Igor Stravinsky, and Les Six (Germaine Tailleferre, Darius Milhaud, Arthur Honegger, Francis Poulenc, Georges Auric, and Louis Durey), who ultimately rejected the renegade Ravel as being too conservative. So deep was the pool of talent that when the St. Sulpice organist Marcel Dupré improvised a symphony on the grand organ of the Trocadéro in 1925, he could turn to Honegger, Charles-Marie Widor, Paul Dukas, Pierné, Henri Rabaud, and Ravel for themes. There were equally brilliant dancers, choreographers, set designers, and painters standing ready to collaborate as well: When Stravinsky needed sets for the Paris premiere of *Pulcinella* in 1920, Pablo Picasso stepped forward.

As Jennifer Homans shows in her recent history of ballet, *Apollo’s Angels*, the Ballets Russes was the catalyst of many progressive pairings. For Ravel, *Daphnis et Chloé*, the completion of Modest Mussorgsky’s *Khovanshchina*, and the orchestration of Emmanuel Chabrier’s *Menuet pompeux* stemmed from Ballets Russes commissions. Sergei Diaghilev, the guiding force of the Ballets Russes, was fond of saying “Astound me!” to his creative team; Parisian audiences seemed to echo this celebrated mantra with “Astound us!”

Ravel navigated the often-turbulent waters through his Société musicale indépendante (SMI), which emerged as a leading forum for new works “free from rules and regulation.” The first concert of SMI featured *Ma mère l’oye*, Ravel’s poke at the solemn pedagogy of the Conservatoire and the “solid qualities of incoherence and bore-

ROGER VIOLETTE / GETTY IMAGES



Claude Bessy and Georges Skibine in ‘Daphnis et Chloé,’ 1959

military service in World War I and enlisted as an ambulance driver) and only five-foot-three. (“I was told to expect a grand master,” quipped the proprietor of the Salle Pleyel in Paris after meeting Ravel, “but I could only see 50 centimeters!”) And professionally, Ravel was a maverick, forming the Société musicale indépendante in 1909 to oppose the staid Société nationale de musique, and declining the Légion d’honneur when it was offered to him in 1920.

A great strength of *Ravel* is its vivid

the *Cahiers d’aujourd’hui*. Audiences flocked to hundreds of theater, dance, and opera productions, concerts, and cabaret performances. At its peak, Paris featured more than 200 café concerts alone. This feverish focus on the arts survived the Great War and the Great Depression, losing its strength only in the 1930s when the cinema began to replace live art as the favored entertainment. Nichols tracks Ravel’s schedule and shows the extraordinary extent to which he and other musicians attended and partici-

dom.” Ravel also became a member of Les Apaches (The Hooligans), a salon that convened regularly to consider the ties among literature, art, and music. It was at the sessions of Les Apaches that Ravel heard the merits of Stéphane Mallarmé, Paul Verlaine, Jules Renard, and other writers whose texts he set in his highly picturesque songs. Unlike most of his French colleagues, Ravel never taught at the Conservatoire. Indeed, he did not have any regular students, nor was he willing to join other French composers after the war to oppose the growing influence of Richard Wagner, Arnold Schoenberg, Sergei Prokofiev, and other foreign composers. He remained aloof.

As Nichols shows, Ravel seemed to find security in past forms. Many of his works appear as modern reminiscences of bygone times, much like Proust. Pieces such as *Menuet antique*, *Pavane pour une infante défunte*, and *Le Tombeau de Couperin* draw on 17th- and 18th-century dance models, updated with enriched harmonies and complex textures. The five movements of *Miroirs* represent modern versions of Felix Mendelssohn and Robert Schumann’s 19th-century character pieces. Other works show a child-like naiveté: *Ma mère l’oye* (Mother Goose) originated as a four-hand duet for the Godebski children, whom Ravel wanted to premiere the work; it was played instead by two well-trained young girls. Ravel recycled these and other piano pieces as orchestral works or orchestrated ballets, which allowed him to enhance the scores with plush instrumental colorings and at the same time to generate additional income. Although he claimed that orchestration was a mechanical process, Ravel seemed to derive inspiration from enlarging the music’s palate of colors: It was as if the piano versions served as preliminary drawings for later painted canvases.

In other piano works he made extraordinary technical demands while exhibiting craftsmanlike precision of detail: *Jeux d’eau*, *Gaspard de la nuit*, and the two late pieces for piano and orchestra, the Concerto

in D Major for Left Hand (for the injured pianist Paul Wittgenstein) and the Concerto in G Major. And exoticism, too, played a vital role in the Violin Sonata (with its well-known “Blues” movement), *Deux mélodies hébraïques* (which includes the Kaddish), and the Spanish compositions such as *Rapsodie espagnole*, *Tzigane*, and the opera *L’heure espagnole*. The last concerns clocks and clock mechanisms—a fascination that crops up elsewhere in Ravel’s music. In a final chapter, Nichols makes the case that Ravel focused on creating very concentrated, intricate musical jewels, in which raw emotionalism is kept in check by a remarkable control of form and content. The surface beauty of Ravel’s pieces represented an alternative to the neoclassicism of Stravinsky and the twelve-tone idiom of Schoenberg. Yet all three composers pursued a similar goal: supreme clarity and organization of the musical elements. For Ravel, this was achieved through exacting attention to detail.

Among the Spanish compositions, *Boléro* emerged as the most exotic, the

most appealing, the most mesmerizing work of all. It was wildly successful and quickly became Ravel’s cash cow. (As Nichols points out, the piano version alone brought in 50,000 francs during Ravel’s lifetime.) Whatever Ravel’s personal view of its merits, he conducted it often, even as his health began to fail. He suffered from insomnia after his war service, and in 1932 was involved in a taxi accident. Even though his injuries were slight, his mental capacity declined steadily after the collision. Diagnosed with ataxia and aphasia he grew unable to compose, and on bad days, incapable even of writing his name. Though no tumor was detected, he underwent brain surgery in December 1937 and died eleven days later.

His works are favorites among professional musicians, but to the general public he is the composer of *Boléro*. Like Edward Elgar and *Pomp and Circumstance*, and Jean Sibelius and *Finlandia*, Maurice Ravel remains linked with one immensely popular composition, the late work he once described as “a piece for orchestra without music.” ♦



For Shame, Schama

A historian who knows better, or does he?

BY ALEC SOLOMITA

Simon Schama is a skylark. Blithe, profuse, unstoppable, like Shelley’s bird he overflows with “shrill delight.” Historian, journalist, orator, producer, political prognosticator, aspiring chef, and borderline bon vivant, Schama has written more than a dozen books, countless articles, and 40 television documentaries (starring Simon Schama). His numerous talk show appearances have assured the impish

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Scribble, Scribble, Scribble
Writing on Politics, Ice Cream, Churchill, and My Mother
by Simon Schama
Ecco, 432 pp., \$27.99

pundit a fame well beyond the academy. Now he offers a 400-page collection of his occasional writings which deal with (as his subtitle disarmingly boasts) just about everything. *Scribble, Scribble, Scribble* includes eloquent paeans to eloquence, donnish tributes to



Simon Schama at a conference on 'The American Future' in Brazil, 2009

dons, intelligent and gripping art history, fawning celebrity portraits, and a series of pieces on food, complete with recipes.

Unfortunately, Schama's limited and limiting ideology mars most of these efforts; his political sensibility has become as cramped as his interests are wide. He continues to sing, but lately the shrill has definitively superseded the delight.

Of course, a body of work as large as Schama's is bound to be uneven. *The Embarrassment of Riches* (1987), his historical *cum* anthropological study of 17th-century Dutch culture, shows the scholar at his best: fluent, insightful, meticulous. By contrast, in his BBC documentary *A History of Britain* (2000-2002), enthusiasm trumps all as Schama the popularizer, modish in black and gray ensembles, stalks the British countryside purveying his overheated version of Albion's past. His narration is accompanied by a bombastic public-TV soundtrack, colorful re-creations of the Isles' greatest battles, and grainy black

and white scenes of Peasants' Revolt skirmishes—which, one fears, a majority of British schoolchildren took to be archival footage.

In his frequent, nearly convincing, displays of self-deprecation, Schama seems both well aware and curiously proud of his excesses. He admits to a "gift of the gab" to the point of logorrhea, revealing that his college writings "depended overmuch on adjectival overload and overwrought atmospherics." These characteristics persist, postbaccalaureate, and in *Scribble, Scribble, Scribble*, they sometimes serve him well. He can be a pleasure to read, particularly on the visual arts. When he chooses his words with care, his "adjectival overload" entertains and instructs; for example, in his characterization of the work of the Belgian painter James Ensor: "Lurid, lyrical, mysterious, sophomorically satirical, intimate, raucous, cerebral, macabre, tender, narcissistic, suicidal, iconoclastic, reverent, supersaturated and washed out."

As often, however, Schama's sentences, in their effort to crackle and pop, end up sounding like an effortful imitation of the early Tom Wolfe. He describes his own handwriting:

Loopy is to my writing what fox is to hedgehog, Tigger is to Eeyore, Bugs is to Elmer, Rabelais to Montaigne, Björk to Coldplay. Loopy bounds and leaps and lurches and can't *wait* to get to the end of the line because—gee, gosh, boy oh boy—there's *another* line to fill, and omigod, a whole *half-page* waiting just for me to do my thing all over it. . . . Loopy's *hs* snake forward like a fly-fisher's line, the tails of Loopy's *fs* and *gs* and *ys* drop deep into the pond, Loopy frisks and gambols, Loopy jives, Loopy got da mojo. Loopy LIVES!

To paraphrase Truman Capote, that's not writing, it's writhing.

In content as well as style, Schama seesaws between the considered and the absurdly naïve, and in recent years the balance has tilted decidedly toward the latter. A native Londoner who has taught in the United States for decades, Schama has—between writing, filmmaking, and a requisite dip into the murky waters of genre-bending postmodernism (*Dead Certainties*, a work Roger Kimball memorably tagged a "harlequinade")—thrown himself into the American political discussion. In this realm, the often unpredictable and occasionally original thinker becomes tiresomely univocal, suffering from a virulent strain of Bush Derangement Syndrome combined with a fierce (if recently stabilizing) case of Obama Rhapsody Fever.

In his political pieces, Schama shows no restraint. His contempt for half of the American population is on lip-curling parade in "The Civil War in the USA." Spurred by the defeat of John Kerry in 2004, this rant offers the original insight that America is deeply divided. Schama sketches his two Americas ("Worldly" and "Godly") without shadows; black and white is all the loopy pencil can yield. "[L]ying on the oceans . . . porous and outward-looking . . . Worldly America . . . freely engages, commercially and culturally, with Asia and Europe in the easy understanding that those

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continents are a dynamic synthesis of ancient cultures and modern social and economic practices.” But Godly America, “solidly continental and landlocked . . . turns its back on that dangerous, promiscuous, impure world and proclaims to high heaven the indestructible endurance of the American Difference.” Worldly America “is pragmatic, practical, rational and skeptical” while Godly America is “mythic, messianic, conversionary.”

These familiar fantasies would be less hilarious if this self-proclaimed child of the Enlightenment were not, when it comes to the incumbent president, irremediably mythic, messianic, and conversionary. In a January 2009 article in the *Independent*, Schama writes that “Obama has accomplished something indispensable for the immediate condition of the country: he has restored public trust in the integrity and competence of American government.” In a more effervescent vein, Schama’s cooing makes Chris Matthews and David Brooks seem hard-to-get: “Obama can play heart and he can play head,” he enthuses. “[T]he basketballing candidate with the nifty jump shot, head turned slightly aside as if tuning in to history’s promptings: ‘I hear you Abe, I hear you Martin.’”

His infatuation with the “lanky African-American intellectual” and his “gaunt gravity” reaches a queasy-making climax in “Avedon: Power,” a piece in which he extols Obama (literally) warts and all:

Was there ever such a pretty wart?
There it sits beside the noble nose,
the solitary imperfection in Richard
Avedon’s impossibly beautiful portrait
head of Barack Obama . . . the
clever, artless, eager child preserved
in the star orator, civic gravity and
American ardour overlaid on the
same face, the open collar an advertisement
of moral transparency.

Schama’s sentimentality about America’s current chief executive is matched by his curiously intimate aversion to the previous one. Writing on September 14, 2001, when one presumes the president was preoccupied with defending the country, “George Bush has yet to show his face on the island

of Manhattan, lest a sooty cinder or two land on the smoothly shaved presidential chin.” In describing life under the “Bush regime,” Schama sounds like a paranoid undergraduate—“the United States Inc. is currently being run by an oligarchy, conducting its affairs with a plutocratic effrontery which in comparison makes the age of the robber barons . . . seem a model of capitalist rectitude”—followed by more specific and dubious assertions. In “Katrina and George Bush,” Schama attacks his subject not only for his “pieties,” vacations, and slow response to the disaster, but claims that Bush’s budget cuts were directly responsible for the hurricane.

Schama’s obsessions taint even the least political pieces. In a short piece on Amsterdam, which he writes with verve and affection, Schama briefly alludes to the 2004 murder of filmmaker Theo van Gogh by a “Muslim zealot.” This is a rare nod to the demographic changes Europe has undergone in the past few decades, but the compulsively tolerant Schama can’t end it there: He must rationalize that van Gogh’s murderer was responding to “a film savagely and, in his eyes, indecently critical of

the strictures of his religion,” and at the end, shoos away worry about Islamist extremism with self-referential optimism: “But this too will pass, I believe. Amsterdam . . . has always been able to sponge up trouble and wring it out again. Long after this essay is published, long after its author has been forgotten, there will still be crowds spilling out on to the evening streets, smoking, drinking and laughing.”

That same blind spot clouds an essay about anti-Semitism on the Web. In 10 pages of text, six lines are devoted to Middle Eastern anti-Semitism while the rest rages against homegrown white supremacist sites. Schama not only sins by omission but ends by performing some fancy footwork to connect virulent racists with opinionated talk radio hosts: “[u]ltrachauvinist blow-hards [who] habitually demonize on air those whom they take as insufficiently patriotic.” This pure non sequitur—on frequent display in *Scribble, Scribble, Scribble*—is the most dangerous brand of guilt by association, and just the kind of sophistry that should fill an ostensibly serious historian with shame. ♦



Secret Service

The swashbuckler behind America's clandestine agencies. BY PAUL D. MILLER

The operations officers of the National Clandestine Service, with whom I worked during seven years as an analyst at the Central Intelligence Agency, were among the most talented, charismatic, and driven people

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Wild Bill Donovan

The Spymaster Who Created the OSS and Modern American Espionage
by Douglas Waller
Free Press, 480 pp., \$30

I have ever met. It takes a special kind of brio to persuade Russian or Chinese officials to share their government’s secrets, to spend years in Iraq or Afghanistan recruiting and training tribesmen to fight America’s enemies, or to develop ways to track the pursuit

of nuclear weapons. They are the furthest point of the “pointy end of the spear” of America’s defenses.

William Donovan (1883-1959) is their spiritual godfather. A major general in the Army, “Wild Bill” Donovan founded and led the Office of Strategic Services (OSS) in World War II. The OSS was America’s first professional human spy organization and the institutional forerunner of the CIA. A professional networker with legendary magnetism and charm, Donovan was the perfect embodiment of America’s spies.

His story deserves to be better known. Born a poor Irish Catholic New Yorker, he went to Columbia and its law school and became a millionaire Wall Street lawyer—a striking example of social mobility and success for a Catholic in his day (helped, no doubt, by his marriage into an elite Protestant New England family). He organized and led an infantry regiment in the First World War and won the Congressional Medal of Honor for his leadership under fire at the Battle of Landres-et-Saint-Georges. He returned home with wealth, connections, and an enviable war record. He sought to ride his rising star to the governor’s mansion in Albany as a Republican in 1932, but his campaign was sloppy and founded on poor research—a sign of things to come. He became an unofficial ambassador-at-large for his erstwhile political rival, President Franklin Roosevelt, touring Europe and collecting firsthand intelligence about the leaders and movements that would collide in the next war. This role led naturally to his becoming FDR’s “Coordinator of Information” in 1941 and then head of the renamed OSS the following year.

But Donovan’s story is hard to come by in a complete, impartial account-

ing. Donovan, like most accomplished statesmen, especially those with *élan*, earned both fanatical enemies and fawning followers. His most notable achievements were done in secret and documented only in files that remained classified for decades. The two most recent biographies appeared in the early 1980s before the OSS files were declassified. Earlier efforts were commissioned and vetted by his family and law firm.



William J. Donovan, 1941

Comes now Douglas Waller with the first full biography in a quarter-century, and certainly the most impartial and best researched. Waller has done a fine job weaving together the main narrative of Donovan’s wartime service. Donovan was a visionary. He saw well before almost anyone else the need for a truly global network of informants to provide the president and chiefs of staff with intelligence on the political and military environment

in which American troops would be operating. He persuaded the president to back his vision—his memo to Roosevelt was later enshrined in a time capsule buried in the cornerstone of the CIA’s headquarters building—and placed at the helm he built an organization from scratch that eventually comprised over 10,000 employees.

Wild Bill Donovan, however, cannot be considered a full biography.

Waller summarizes Donovan’s first 35 years in two brief, slightly dull chapters and pays too little attention to Donovan’s personal life throughout. Donovan considered entering the priesthood and even enrolled in a preparatory school for it; but a priest dissuaded him. Why? What did Donovan’s faith mean to him? We learn nothing about any spiritual crisis that surely attended the enrollment. Donovan’s Protestant in-laws disapproved of him; did his Roman Catholic family return the sentiment? Did he face ostracism for leaving his Irish, Catholic, Democratic roots to become a member of a well-heeled Republican elite? How did he feel about his social evolution? We get no answers. Donovan did not have a good marriage, but he and his wife chose to stay together after they lost a daughter in an automobile accident. We get no insight into Donovan’s inner life.

Perhaps he left no record and did not keep a journal; the author does not say.

But Waller is on solid ground for the main story. The OSS engendered myths and exaggerations of its successes and failures over the years. By some accounts it was a collection of heroes who could have won the war singlehanded if they had been let off the leash. By others, it was a gang of criminals who foreshadowed the CIA’s abuses of later decades. Waller

TIME & LIFE PICTURES / GETTY IMAGES

avoids either cliché: He knows this ground well, has better access to previously classified documents than previous biographers, and has done his homework.

In his telling, Americans were amateurs at espionage in 1941—but they were amateurs at nearly every other aspect of global war as well. The OSS did no worse than the rest of the Army. The analysis by OSS researchers was the most valuable service the agency performed because they were putting together the big picture in a way no other organization did or could. The raw reporting from informants around the world could be tremendously helpful, but was often unreliable, because OSS agents lacked even rudimentary training in how to vet sources. Guerrilla, paramilitary, and covert operations were least useful because they were often poorly planned, had unrealistic aims, and could not compete with the overwhelming power of total war. Waller's conclusions should not be mistaken for a veiled critique of contemporary covert operations: To his great credit, he avoids weighing in on current events and does not use *Wild Bill Donovan* as a vehicle to editorialize about the CIA.

Why didn't Donovan lead the CIA? As head of the OSS he argued strenuously for its continuance after 1945. He bitterly opposed President Harry Truman's decision to disband the OSS and split up its functions among the State Department and the military. Events quickly proved Donovan right and Truman wrong, and Truman came around within two years to back the establishment of a permanent spy organization. Of course, Donovan would have been the natural choice to lead it, but even Donovan's admirers grant that he was a poor administrator who often led more by intuition than by planning. The OSS was an organizational mess, and some operations gave covert action a reputation for being hare-brained. Additionally, Donovan was blessed with an excess of confidence, and he was a conservative Republican—too conservative for GOP lead-

ing lights like Thomas Dewey—and in the Washington of the 1940s his womanizing gave ammunition to enemies who wanted to paint him as a playboy who lacked self-control. Instead of leading the CIA he became ambassador to Thailand.

If Donovan had become director of Central Intelligence under Truman, he would have been a leading contender to head the State or Defense Department under President Dwight D. Eisenhower and become a principal architect of Cold War strategy. He would have earned a place among the pantheon of statesmen who did not become president, men like Henry

Clay, William Seward, Elihu Root, and George Marshall. These figures founded (or refounded) institutions, articulated clear, strong ideas about the meaning of self-government or America's role in the world, and proved superbly effective at marshaling resources and directing action. Donovan failed—but only just failed—to earn a place among them. He was overconfident, sloppy in execution, and earned too many enemies. But that may simply come with the terrain. Clandestine intelligence needs to rely on intuition, charisma, and gut. America needs the likes of William J. Donovan. ♦

BCA

Korean Legends

A perverse perspective on events on the peninsula.

BY JORDAN MICHAEL SMITH

In late 2002 and early 2003, as the campaign leading up to the Iraq war was underway, protests attracted hundreds of thousands in Washington, New York, and across the country. Though outwardly broad-based, mainstream, and “moderate,” reporting revealed that many of these protests were organized by International ANSWER, a group run by a Marxist political party that supports Kim Jong Il, Fidel Castro, and Slobodan Milosevic, among other illiberal characters. *The Korean War* is a bit like one of those rallies: Reasonable and middle-brow though it appears—what could be more mainstream than the Modern Library?—close reading reveals its author to be a defense attorney for arguably the most revolting government on the planet. To oppose American impe-

rialism is one thing; to whitewash the North Korean regime is another, more sinister, undertaking.

Bruce Cumings, a historian at the University of Chicago, is best known for his first book, *The Origins of the Korean War* (1981). Several of the revisionist claims made in that book were considered path-clearing by scholars, and it remains valued among experts on the subject.

But Cumings's political and historical judgment has worsened with age. His *North Korea: Another Country* (2003) contained several indefensible claims: “I have no sympathy for the North,” he wrote, “which is the author of *most* of its troubles” (emphasis added)—a qualification surpassed only by the author's omission of any active opposition he may have to such a horrid regime. Americans “should do something about the pathologies of our inner cities—say, in Houston—before pointing the finger” at North Korea.

The Korean War
A History
by Bruce Cumings
Modern Library, 320 pp., \$24

Jordan Michael Smith is a writer in Washington.

The Korean War is not a straightforward narrative history. It is divided into topical chapters on the war's legacy, the civil conflict prior to full-blown hostilities, the air war, and McCarthyism, as well as the course of the conflict. It takes as its starting point that the Korean War, and North Korea itself, have been misunderstood, misrepresented, and misrepresented in the United States; this is "a book seeking to uncover truths that most Americans do not know and perhaps don't want to know, truths sometimes as shocking as they are unpalatable to American self-esteem."

The Korean War had its roots in the artificial, arbitrary division of the country by the Allied powers, according to Cumings: "It is now clear from the Soviet documents that Pyongyang had made a decision to escalate the civil conflict to the level of conventional warfare many months before June 1950, having tired of the inconclusive guerrilla struggle in the south, and perhaps hoping to seize on a southern provocation like many that occurred in 1949." It could as easily have been the South that began the war, he implies, and it is no immoral act to have been the first to strike. When the South Korean president Syngman Rhee told the American envoy John Foster Dulles that he wanted to unify Korea, "it [was] no different from the threats to march north made many times before." Dulles was not in collusion with Rhee, Cumings concedes, "but what might the North Koreans have thought?" Cumings has clearly given a great deal of consideration to what the North Koreans thought; but he has gone beyond affection (as Paul Berman said in a different context) and "succumbed to a common syndrome of academic regional specialists: he has ended up adopting several of the intellectual assumptions that ought to be his topic of study."

On page following page, Cumings exonerates North Korea or overstates American culpability. "Kim Il Sung crossed the five-year-old 38th parallel, not an international boundary like that between Iraq and Kuwait, or Germany and Poland; instead it bisected a nation that had a rare and well-recognized unitary existence going back to antiquity," he writes. This is false. The 38th

parallel was internationally recognized as a legitimate boundary, both by the United Nations and by the two existing superpowers, which is why there was such deep debate amongst the Koreans, Chinese, and Soviets about whether to cross it. The brazenness of North Korea's invasion also explains why alongside the United States fought Australia, Canada, Turkey, and 18 other nations.

Worse, Cumings underplays the value of a democratic South Korea:

The true tragedy was not the war itself, for a civil conflict purely among Koreans might have resolved the extraordinary tensions generated by colonialism, national division, and foreign intervention. The tragedy was that the war solved nothing: only the status quo ante was restored, only a cease-fire held the peace.

No, the war *did* solve something, and not something trivial: an anti-Communist, independent South Korea that evolved into a flourishing market democracy. Was authoritarian South Korea worth protecting in 1950? Look at the leadership drama currently underway in the North: More than a half-century after the armistice, North Korea is a ghastly place. And yet Cumings is, at the least, a friendly visitor whose perspective proceeds directly from his political attitude: "North

Korean political practice is reprehensible, but we are not responsible for it. *More* disturbing is the incessant stereotyping and demonizing of this regime in the United States" (italics added).

He complains that "there is no evidence in the North Korean experience of the mass violence against whole classes of people or the wholesale 'purge' that so clearly characterized Stalinism. . . . Nevertheless, North Korea remains everyone's example of worst-case socialism." Of course, what characterized Stalinism was not only the purges and mass violence but the thought control, suppression of dissent, destruction of opposition, widespread propaganda, cult of personality, and central control of the economy. And by these standards North Korea's rulers do not just meet Stalin's record but exceed it. If North Korea remains everyone's example of "worst-case socialism," that is because it illustrates precisely what can happen in worst-case socialism.

There are a few points of value here: Cumings provides a sobering reminder of the toll the American air war had on both Koreas, and our postwar occupation was more brutal than most Americans know. But readers interested in a brief, well-informed, and fair-minded guide to the conflict are referred to William Stueck's *The Korean War: An International History*. ♦

B&A

Larry the Fable Guy

A feel-good film leaves a feeling of queasiness.

BY JOHN PODHORETZ

Half a century ago, the novelist Herbert Gold tried writing for television and turned in a script that was deemed wanting. "No more downbeat dramas!" he was told. "We want happy

John Podhoretz, editor of *Commentary*, is *THE WEEKLY STANDARD's* movie critic.

Larry Crowne

Directed by Tom Hanks



stories about happy people with happy problems." That is the perfect description of *Larry Crowne*, the new movie

cowritten and directed by its star, Tom Hanks. Though it tells a nightmarish story about a divorced middle-aged man who loses the very modest job he loves and finds himself carrying a house whose mortgage he cannot afford and with no prospects for the future, *Larry Crowne* is a determinedly peppy picture.

After a short montage of job rejections, Larry hies himself off to community college, becomes part of a multi-ethnic gang of scooter-riders, gets new

eran who was nine times Employee of the Month, is belittled for his lack of education as he is handed his walking papers—does not devastate him or even wound him particularly. Nor does the loss of his house later in the picture. He seems impervious to the very real disasters and disappointments that have befallen him.

Hanks was brilliant and heartbreaking as the desperate man stranded alone on an island in *Cast Away* 11 years ago, but he seems to have lost the

cutesy approach as director, writer, and star has resulted in a series of jaw-dropping bizarreries and a yuk-yuk tone that conjure up the godawful Disney youth comedies of the 1960s (*The Computer Wore Tennis Shoes*, *The Love Bug*). Once Larry steps onto the community college campus, he arrives in a jaunty Munchkinland where beautiful 20-year-old girls riding on scooters happily cut his hair, improve his wardrobe, and provide him with an entirely new social life for no good reason.

His fellow students adore him and his teachers respect him, but he is mostly silent and looks puzzled and gives them no cause for their enthusiasm other than that he is embodied by Tom Hanks.

About his relationship with his public-speaking teacher, played by Julia Roberts, the less said, the better. Indeed, the less said about Julia Roberts, the better—save this: The clock is fast ticking to the time when she will be grateful to be playing the female lead on *CSI: Dubuque*.

There's nothing wrong with trying to find a light tone in addressing the woes of those caught in the present economic calamity. Hanks and Vardalos probably thought they were updating the great Depression-era comedies, like *My Man Godfrey* (in which an educated man brought low becomes a butler to a nouveau riche family) and *Easy Living* (in which a rich man angrily hurls a fur coat off his balcony that lands on the head of an astonished shopgirl riding a double-decker bus down Fifth Avenue). Those movies proceeded from the premise that rich people were silly and stupid and needed some wising-up at the hands of honest ordinary folk. They flattered their audience in this way.

No one in the 1930s would have made a movie based on the premise that losing a beloved job and house are a spur to a better life. That would have been insulting to those who had lived through such pain. Designing escapist entertainment that reflects some of the realities of contemporary life requires a gossamer touch. *Larry Crowne* is as delicate as a foreclosure notice. ♦



Julia Roberts, Tom Hanks

clothes and a new hairstyle and a job as a short-order cook, and catches the eye of his unhappily married public-speaking professor, Julia Roberts. His profound woes, it turns out, are little more than happy problems, curable with the right attitude.

Larry is unencumbered by responsibilities that might make his circumstances more discomfiting. Hanks and his cowriter, Nia Vardalos, don't want anyone like Larry Crowne to find *Larry Crowne* unduly painful, so they just excise the pain. Rarely has middle-aged loneliness been such a blessing. His wife left him and he has no kids, no infirm mother, no senile father. In fact, it appears that he has literally nothing in his life but his job as assistant manager of a big-box store in the San Fernando Valley. And yet the loss of that job—depicted in an astoundingly false scene in which the devoted Larry, a 20-year Navy vet-

understanding he showed there of how an ordinary person is forced to cope when fate deals him a terrible hand. In 2006, *Variety* trumpeted the fact that Hanks had purchased the rights to a memoir called *How Starbucks Saved My Life*, the account of a senior executive let go from his firm who took a job as a barista and found new meaning outside the rat race. That must have been the core concept for *Larry Crowne*, only Hanks made the decision to play an Everyman rather than a bigwig. Of course, the notion that a layoff could provide a growth experience was the sort of thing we all liked to believe at a time when housing prices were rising in tandem with 401(k) values.

But now, long-term unemployment is reaching levels unseen in 80 years, the reality is that people like Larry Crowne are mired in circumstances from which it will take them years to recover. Given these facts, Hanks's

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ONE DOLLAR CHEAP

House Dems Warn Obama: 'Not Going To Be Ignored'

President Stalked, Finds Boiled Bunny

By JENNIFER STEINHAUER

WASHINGTON — President Obama has secluded himself and his family inside the White House following what administration officials are calling a stalking incident. At a recent fundraising gala for the Democratic Senatorial Campaign Committee, House minority leader Nancy Pelosi managed to slip past security and came within ten feet of the president before U.S. Capitol Police apprehended her. The minority leader was heard yelling, "We reject your rejection!" as she was dragged away.

Pelosi claimed she simply wanted to ask the president why he was treating her caucus so badly. "We delivered him his health care reform. He told us no matter what happened on midterm election night he'd still respect us the next morning. And then he dumps us? I don't think so." The former speaker also brought to the fundraiser a pot containing a boiled rabbit. Pelosi insists, however, it was for Michelle Obama and that it was "one hundred percent organic."

In a "Today" show interview, the president emphasized that the Democrats in the House have done nothing wrong. "I have a great respect for Minority Leader Pelosi and her colleagues," said Obama, "even if they've been reduced to the smallest, most insignificant Democratic presence in the House



Nancy Pelosi is removed by U.S. Capitol Police from a July fundraiser.

since the days of FDR." When pressed about his focus on working with Senate Democrats and House Republicans, the president conceded, "Things are different—I won't deny that. But it has more to do with how I operate and less with what the House Dems are doing. It's not them, it's me."

Sources say Obama will remain ensconced in the White House until he feels safer. "Right now the president just isn't comfortable meeting one on one

with House Democrats," said White House press secretary Jay Carney. "When things calm down, after the debt ceiling agreement is reached, then maybe the two sides can meet up again. In a public setting." And although the president will not be attending the upcoming House retreat in the deep woods of West Virginia, he will be sending in his place Vice President

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Dominique Strauss-Kahn Triumphant

France Celebrates Consensual Encounter With Maid

the weekly
Standard

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